# SUPREME COURT OF THE UNITED STATES.

327.

## No. 66.

## HENRY BRUSH, APPELLANT,

vs.

## JOHN H. WARE, EDW'D M. WARE, WM. W. WARE, AND SUSAN M. WARE, WIDOW OF ROB'T S. WARE, DEC'D, AND MARY W. AND ROBERTA ANNA, INFANTS OF SAID ROB'T S. WARE, BY SUSAN M. WARE, THEIR MOTHER AND NEXT FRIEND.

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APPEAL FROM THE CIRCUIT COURT U. S. FOR OHIO.

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*Langtree & O'Sullivan, Print.*—1840.

THE UNITED STATES OF AMERICA, *District of Ohio, sct.*

At a circuit court of the United States of America, within and for the seventh circuit and district of Ohio, begun and held at the court house in the city of Columbus, in the district aforesaid, before the honorable John McLean and Humphrey H. Leavitt, judges of said court, on the first Monday in the month of July, being the first day of July, in the year of our Lord one thousand eight hundred and thirty-nine, and of the American Independence the sixty-third.

Amongst other proceedings had, were the following, to wit:

JOHN H. WARE, et al. Compl'ts,
*vs.*
HENRY BRUSH, Defend't. } In Chancery.

Be it remembered that heretofore, to wit: on the ninth day of November, anno Domini eighteen hundred and thirty-one, came the complainants, by Messrs. Goodenow and Bayard, their solicitors, and filed in the clerk's office of said court their certain bill of complaint against Henry Brush and others, which is in the words and of the tenor following, to wit:

To the honorable judges of the court of the United States for the seventh circuit and district of Ohio, sitting as a court of chancery at Columbus, within and for said district, at their December term, A. D. 1831.

*Bill.*

The petition and bill of complaint of John H. Ware, Edmund M. Ware, William W. Ware and Susan M. Ware, widow of Robert S. Ware, deceased, and Mary W. Ware and Roberta Anna Ware, infant children of the said Robert S. Ware, by the said Susan M. Ware, their mother, guardian and next friend, citizens of the commonwealth of Virginia, and residents therein, humbly complaining, sheweth unto your honors: that your orators are the only heirs and legal representatives of John Hockaday, late of the county of New Kent, in the said commonwealth of Virginia, deceased: that the said John Hockaday was an officer in the service of his country, in the war of the American Revolution, and held a captaincy in the Virginia troops in the continental line, for upwards of three years during that war; that in virtue of the acts and resolutions of the continental Congress, and the laws of his own State, he became entitled, for his services as such officer in the said war of the Revolution, to *four thousand acres of land*: that by the stipulations and reservations contained in the acts and deeds of cession of the said commonwealth of Virginia to the United States, after the treaty of peace with Great Britain, to wit, in the year of our Lord one thousand seven hundred and eighty-three–four, and by the acts and resolutions of the Congress of the United States, accepting and acquiescing in the terms and conditions

of said cession, the said John Hockaday, as such officer aforesaid, became entitled to receive and to locate the said four thousand acres of land in that part of the country northwestward of the Ohio river, so ceded as aforesaid to the said United States, and within the reservation thereof, called the Virginia Military district, lying and being within the State of Ohio. But, may it please your honors, it so happened in the Providence of God, that the said John Hockaday was removed from this mortal state of existence, without having applied to the proper tribunal of the said commonwealth of Virginia for the allowance or authentication of his claim, preparatory to the issuing of warrants, and the locating of the same, according to the law and usages in such cases.

Your orators further humbly state, that the said John Hockaday departed this life in the year of our Lord one thousand seven hundred and ninety-nine, leaving but one child living, and that one his only heir, namely, Hannah C. Ware, who had, long previous to his death, intermarried with Robert S. Ware, of the said county of New Kent: that the said John Hockaday left a will, in which he disposed of his "personal estate" for certain purposes, and to certain persons and objects therein named, and appointed the said Robert S. Ware, his said son-in-law, and William Parrish and John Saunders, his executors: that afterwards, *to wit*, at a court held in the said county of New Kent, on the 11th of July, 1799, the said Robert S. Ware caused, and procured said will to be proved, approved and recorded, according to the laws of the said commonwealth of Virginia, and assumed upon himself alone the burthen of the trust and execution of the said will. And your orators allege, that the said Robert S. Ware never did execute said will, or settle up said estate, as it was his duty to do, but on the contrary, wholly neglected and refused; nor did the said William Parrish, or the said John Saunders, ever execute said will, or settle said estate.

And your orators further aver, that neither by the terms nor by the intention of said will, or the laws of the commonwealth of Virginia, had the said Robert S. Ware, as executor or otherwise, any right or authority whatever, to intermeddle or interfere in any way or manner whatever with the real estate of the said Hockaday, or with the claim of the said Hockaday, to the said *four thousand acres* of land above mentioned, the same being held and considered by the laws of the commonwealth of Virginia as real estate, and not as goods and chattels, and therefore could not be considered or treated by the said executor, as *assets* in his hands, for any purpose whatever.

Your orators further state, may it please your honors, that some few years after the death of the said John Hockaday, and subsequent to the *probat* of the said will, *to wit*, on the 14th day of October, A. D. 1805, the said Hannah C. Ware, his daughter, and only heir, the wife of the said Robert S. Ware, departed this life, leaving John H. Ware, Robert S. Ware, Edmund M. Ware and William W. Ware, the offspring of the said Hannah, and the said Robert S. Ware, and her only children and heirs; that subsequently, *to wit*,

some time in the year 1808, the said Robert S. Ware, the executor of the said Hockaday, and the husband of the said Hannah C. Ware, also departed this life, while yet their children aforesaid were living; but that afterwards, *to wit*, in the year 1828, the said Robert S. Ware, the second son of the said Robert S. and Hannah C. Ware, died, leaving Susan M. Ware, his widow, and Mary W. Ware, and Roberta Anna Ware, his infant children and only heirs; that these infant children, together with their mother, the said Susan M. Ware, as the widow of the said Robert S. Ware, and as their guardian and next friend, and the said John H. Ware, Edmund M. Ware and William W. Ware, are the complainants in this bill, and claim that they have the sole and exclusive right to the said four thousand acres of land, wheresoever, and by whomsoever the same may have been located, their common ancester never having in any way or manner sold, conveyed, transferred, assigned, devised or parted with his equitable or legal estate therein.

Your orators further humbly state, as they are advised and believe, and so they charge the truth to be, that after the death of the said Hannah C. Ware, as before stated, and but a short time before the decease of the said Robert S. Ware, executor as aforesaid, one Joseph Ladd, (a stranger to your orators, who has since died without heirs, and insolvent, as your orators are informed,) surreptitiously procured a certificate issued by the council of the said Commonwealth of Virginia, certifying that the representatives of John Hockaday were entitled to the proportion of land allowed a Captain of the continental line for three years' service, and dated the 23d of July, 1808, and with that certificate, the said Joseph Ladd, afterwards, to wit, on the 6th of August, 1808, by collusion and covin, or deception and foul practices, procured of the said Robert S. Ware, executor as aforesaid, an informal, illegal, and fraudulent, transfer or sale thereof to him, and by covin, fraud and deception, procured from the said Robert S. Ware, executor as aforesaid, an order drawn by him, the said Robert S. Ware, and directed to the register of the land office, for the State of Virginia; requested him to issue to the said Joseph Ladd, his heirs or assigns, a warrant for whatever land might be due the said Hockaday for his services as an officer in the Army of the United States, in the then late war with Great Britain, and stating therein, that the said Robert S. Ware had received full value of the said Ladd, for said land, &c., which said order was signed and sealed by the said Robert S. Ware, as "executor of John Hockaday;" a copy of which said order, together with a copy of the aforesaid certificate from the council of Virginia, as also a copy of the said will of the said John Hockaday, your orators exhibit as a part of their bill of complaint, filed, and marked Nos. 1, 2, 3, in the exhibit A. And your orators further aver, that the said Joseph Ladd, instead of paying the said Robert S. Ware "full value" for said land, gave him no real *bona fide* consideration whatever therefor; but for the transfer of the said certificate and the aforesaid order on the register of the land office of Virginia, he gave as a pretended compensation a pair of boots, and forty dollars in cash, as a mere cloak to the iniquitous transaction.

Your orators further respectfully state and show to your honors, that afterwards, to wit, on the eighth day of August, A. D. 1808, the said Joseph Ladd, in further prosecution of his fraudulent purposes, had the address to procure from the register of the land office of Virginia, four several military warrants of one thousand acres each, to be issued to him, as "assignee of Robert S. Ware, executor of John Hockaday, deceased," on the aforesaid certificate and "assignment," as will appear by the certificate of William G. Pendleton, register of said land office, a copy of which is herewith filed as a part of this bill, and distinguished by No. 4, "in exhibit A." And your orators also aver that subsequent, but at what time or times your orators have no knowledge, the said Joseph Ladd, by himself and his agents, caused and procured the said military warrants, numbered 5520, 5521, 5522, 5523, to be located and laid upon certain tracts of land in the said Virginia military district, so called, in the State of Ohio in different parts of the same, of which said several tracts, and their situation, quantities, and their present occupants, your orators are unable to give a positive and accurate description and statement, but believe them to be as follows:

Military warrant, No. 5,520, for one thousand acres, was located by George Hoffman, in parcels, as follows: that is to say, 400 acres in the county of Madison, being part of survey No. 6,247, and which is now in the possession of Henry Brush, of Chillicothe, Ross county, Ohio; 300 acres in the same county, part of survey No. 6,249, now in the possession of Matthew Ray, of said county; 200 acres in said county, part of survey No. —— (not known,) now in the possession of the said Henry Brush; and 100 acres in the same county, part of survey No. 7,943, now in the possession of Abraham Hoffman, formerly of the said county of Madison, now in parts unknown to your orators.

Military warrant, No. 5,521, for one thousand acres, was located by the said George Hoffman, in parcels, as follows, that is to say: 130 acres on the waters of Deer Creek, in Madison county, part of survey No. 6,244, and now in possession of Thomas Taylor, of said county; 200 acres in said county of Madison, part of survey No. 6,245, now in possession of Eli W. Gwynne, of said county; 300 acres in the same county, part of survey No. 6,246, and now in possession of Aquilla Toland, of said county; 70 acres in the same county, part of survey No. 8,371, now in the possession of Philip Lewis, of said county; 300 acres in the same county, part of survey No. 6,245, now in possession of the said Abraham Hoffman, or the aforesaid Eli W. Gwynne, or both of them.

Military warrant, No. 5,522, of one thousand acres, was located by the said George Hoffman, in parcels as follows, that is to say: 400 acres on Darby creek, in Pickaway county, survey No. 6,210, now in possession of James Barnett, formerly *of* Ohio, but whether of the said county of Pickaway or not, your orators are not certainly advised, but who is now in parts unknown to your orators; 600 acres on the waters of Fulton's creek, in the county of Delaware, survey

No. 6,211, now in the possession of the said James Barnett, or others, to your orators unknown.

Military warrant No. 5,523, of one thousand acres, located by the said George Hoffman, in parcels as follows, that is to say: 454 acres or upwards, in the county of Champaign, survey No. 6238, now in possession of Matthew Bonner, of said county; 600 acres or thereabouts in the same county, same survey, No. 6,238, and now in possession of one Joseph Hoffman, formerly of said county of Champaign, but now in parts unknown to your orators. Wherefore, your orators pray that the said Henry Brush, of Ross county, Matthew Ray, whose residence is unknown, Abraham Hoffman, Thomas Taylor, Eli W. Gwynne, and Aquilla Toland, of the county of Madison, James Barnett, formerly of the county of Pickaway, and Matthew Bonner and Joseph Hoffman, formerly of the county of Champaign, who are all citizens of Ohio and residents therein, excepting the said Abraham Hoffman, James Barnett, and Joseph Hoffman, who reside in foreign parts, may be made defendants to this, your orators' bill of complaint.

Now your orators allege, and so they believe the truth to be, that the said George Hoffman, (whose place of residence they have never known, but who has long been dead, as they are informed and believe) was the mere agent and servant of the said Joseph Ladd, in locating and laying the said warrants upon the aforesaid tracts of land, and that if ever patents were issued from the General Land Office of the United States at Washington city, for the said several tracts of land, or if sales were ever ostensibly made by the said Joseph Ladd to the said George Hoffman, or the aforesaid tenants in possession, or if there be any intermediate conveyance between the patentee or patentees, and the said tenants in possession, of all which your orators are ignorant; such patents have been obtained, and such sales and such conveyances made, for the purpose of evading and defeating your orator's just rights, and in fraud thereof, and ought, and must be held and taken to enure to their benefit and behoof; and your orators further allege and charge, that the aforesaid defendants, by whatsoever title they may hold or possess the premises, well knew, at the time they acquired such title, or went into possession of these respective parcels of land, that the same was located and held under the warrants aforesaid, and that whatever title or claim they received by purchase or otherwise, was derived through and from the said John Hockaday; and that they combined and conspired with the said Joseph Ladd, his agents and associates, to divest your orators, by changes of title, and spurious alienations to pretended innocent purchasers, of the power and means of preserving the land itself into the hands of the present ostensible owners.

Your orators further state to your honors, that they, the said John H. Ware, Edmund M. Ware, and William W. Ware, as well as the said Robert S. Ware, deceased, were minors at the decease of their ancestor, the said Robert S. Ware, executor as aforesaid, and that neither they nor the said Mary M. Ware and Roberta Anna Ware, nor their mother, the said Susan M. Ware, their guardian and friend

as aforesaid, had, at any time during the lifetime of the said Robert S. Ware, executor as aforesaid, nor for many years subsequent to his death, any knowledge whatever of the issuing of the said certificate by the honorable council of the commonwealth of Virginia, or of the pretended assignment of the same to the said Ladd as above stated, nor of the issuing of the said military warrants, above described, or of any subsequent proceedings in locating the same, or of procuring any patents or other assurances or muniments in the premises, nor did they, or any, or either of them ever receive, directly or indirectly, any value or consideration whatever for the said valuable claim and estate of their ancestor, so unjustly and fraudulently attempted to be arrested and divested from them; and they further allege and claim, that their ancestor, the said John Hockaday, having never, by any act, consent, or color of consent, parted with, or in any way incumbered his right, interest, and estate, in and to the said four thousand acres of land; and that neither *they*, nor any one of them, having in any way or manner whatever given their consent, or by their acquiescence permitted even a presumption to be drawn of their consent, to any of the aforesaid collusive, fraudulent, and unjust acts of the said Joseph Ladd, or the said Robert S. Ware, executor as aforesaid, or the said George Hoffman, or any of the said defendants, or any of their confederates; they are now entitled, upon the law of the land, and upon the long and well established principles of equity, to claim and demand of and from the said Henry Brush, Matthew Ray, Abraham Hoffman, Thomas Taylor, Eli W. Gwynne, Aquilla Toland, James Barnett, Matthew Bonner, and Joseph Hoffman, and from each of them and their confederates, whensoever and wheresoever found, a delivery and surrender of all the title papers, patents, deeds, articles of agreement, contracts and memorandums touching the several premises above described, together with a delivery of the possession of the premises, and of each and every lot, with releases of the same, and an account of the rents and profits: for that your orators further allege and claim that the said tenants in possession, and every other person in whom the legal title may vest, or may have been vested, have held and now hold, and have been and now are liable as trustees to your orators, in whom the entire equitable estate vested on the death of their common ancestor, the said John Hockaday.

And your orators, in full confidence of their rights, and with strong solicitude to avoid litigation, had hoped that the said defendants would have peaceably and amicably rendered up the title papers, deeds, and articles of agreement, and all other muniments pertaining to said estate, and delivered possession to your orators, and rendered just accounts of the rents and profits of the said several premises to your orators, as they were bound in good conscience, equity and justice to do. But now so it is, may it please your honors, that the said defendants not only refuse to deliver up the said title papers, and the possession of the said tracts and parcels of land, and render an account as aforesaid, but combining and confederating themselves with others to your orators unknown, (who, when discovered, your orators pray

may be made defendants to this bill, with apt and proper words to charge them,) refuse to give your orators any information of, from, or under whom they immediately claim, by what derivative title they hold, or how they came into possession of their respective lots or parcels of land, and set up and claim full and entire title in themselves respectively from the ancestor of your orators, through and by virtue of the pretended "assignment," aforesaid, of the said Robert S. Ware, executor, as aforesaid; and pretend that the said executor had, by virtue of the will of the said John Hockaday, full power and authority to sell and assign the said certificate and interest and right of his testator in and to the said four thousand acres of land, and the military warrants therefor, and that the said Joseph Ladd paid the said executor a full and fair value therefor. That the right of the said Hockaday, or of his heirs, in and to the said four thousand acres of land, or the military warrants therefor, by virtue of the said certificate of the council of Virginia, was a subject of barter and sale, and convertable, in the executor's hands, into money, for which the executor alone can be accountable to the heirs; and that even if the said certificate had been, by Ladd, surreptitiously procured, or if the interest of the said John Hockaday in and to the four thousand acres of land, could not be considered assets in the hands of his executor, and that the sale by him to the said Joseph Ladd, were ever so fraudulent and iniquitous, and however surreptitiously the said military warrants may have been obtained, still the issuing of the patents cover all previous frauds, iniquities and irregularities; and that they were required in no case, by the law of the land, to look behind or enquire beyond the patent itself, to know the soundness and validity of each one's respective title. And that your orators will be precluded in seeking a redress of their wrongs in this honorable court, from investigating or calling upon them to answer for any of the conduct, acts or practices of the said Ladd, or any other person, prior to the issuing of the patents for the aforesaid respective tracts of land, however fraudulent and iniquitous such conduct, acts or practices may have been; and that they, the said defendants, are protected against your orators' claims by the statute of limitations, although a portion of your orators are still infants, under the age of twenty-one, and all are non-residents of the State of Ohio, and are therefore exempt from the operations of the statute of limitations, and although they set up and claim under the same title as your orators. All which actions, transactions, practices, and doings of the said Ladd and George Hoffman, and the said defendants and their confederates, are contrary to the principles of equity and good conscience, and against *of* the law of the land, and manifestly tend to the great injury and injustice of your orators: Wherefore, and in as much as your orators are without plain, full, complete or adequate remedy at law, they pray the aid and interposition of this honorable court, in the exercise of its extraordinary equitable jurisdiction, and that the said Henry Brush, Matthew Ray, Abraham Hoffman, Thomas Taylor, Eli W. Gwynne, Aquilla Toland, James Barnett, Matthew Bonner, and Joseph Hoffman, and their confederates, when discovered, may be com-

pelled, by the due process of this honorable court, to answer on oath all the matters and things herein above stated and set forth, as fully, particularly, unequivocally, and distinctly as if the same were herein again repeated, and they minutely interrogated thereto ; and that they each for himself produce and exhibit to this honorable court, with his answer, all patents, deeds, documents, muniments, or papers in his possession or control, relating to or touching the premises by him held, or in any wise claimed, either by occupancy, possession or title; and that they set forth and describe particularly the lot or lots, tract or tracts of land, by them respectively claimed or possessed, and trace their titles to their source, and if they are not each in possession of the tract or tracts of land charged to him in this bill, that they respectively answer and say, if they ever were in possession or claimed title to the same; and if so, to whom they sold, transferred, or gave up their claim or title, and who now occupies, and by what title the occupant holds. And that each also, for himself, answer and state, according to his knowledge and belief, who the said George Hoffman was that located the said military warrants, and what title, interest, or claim he had in or to the said warrants, or in and to the said several tracts of land upon which the same were laid ; and in what character, capacity, or relation he acted and stood towards the said Joseph Ladd, in the survey and location of said warrants ; or if *he* pretended to own or claim any of said warrants, or sold and transferred any ; to whom, and for what consideration ; and if he be living, where his place of residence is, and if deceased, whether he died solvent and wealthy, or insolvent ; and who his heirs are, and where they reside. And that each of the defendants do also set forth and state what consideration he paid for the tract or tracts which he claims or possesses ; how long he has occupied, and the value of the rents and profits of each particular tract, and its present improvements.

And your orators pray that, on a final hearing of this cause, this honorable court will order, adjudge, and decree that the title papers of or pertaining to each particular lot, tract, or parcel of land, be given up and cancelled, or delivered to your orators ; and that the said defendants be each required, under sufficient penalty for that purpose, and within a reasonable time, according to the practices and usages of this honorable court in such cases, to make, execute, and deliver to your orators good and sufficient releases for each and every lot, tract, or parcel of land in this bill aforesaid described, or of which the defendants, or either of them, are in possession, and that each surrender the possession thereof accordingly ; and that this honorable court will also order and direct an account to be taken of the rents and profits of each lot, tract or parcel of land, and adjudge to your orators a due and reasonable compensation therefor. And your orators pray that such other and further relief in the premises may be extended to them as the nature and merits of their cause may require, and the principles of equity and good conscience sustain, and as your honors may adjudge meet and just, &c.

GOODENOW & BAYARD,
*Solicitors for Compl'ts.*

**Exhibits referred to in the foregoing bill are as follows, to wit:**

VIRGINIA, *to wit:*

I, Thomas Mann Randolph, Governor of the Commonwealth of Virginia, do hereby certify and make known to all persons whom it may concern, that William G. Pendleton, whose name is subscribed to the annexed document, was, at the time of subscribing the same, and now is, register of the land office of the commonwealth of Virginia, aforesaid; and that William Douglass, whose name is also subscribed to the said document, was, at the time of subscribing the same, and now is, justice of the peace for the county of New Kent, in the State aforesaid—duly appointed and qualified according to law; and that to all their official acts respectively, as such, due faith, credit and authority are had and ought to *be* given.

In testimony whereof I have subscribed my name, and caused the great seal of the Commonwealth to be affixed hereunto, at the city of Richmond, this 29th day of May, in the year 1821.

[SEAL.]

THO. M. RANDOLPH.

In the name of God, amen. I, John Hockaday, of New Kent county, being of perfect mind and memory, and calling to mind, and duly considering the uncertainty of human life, do make and constitute this my last will and testament, in form and manner following: First and principally, I commit my soul into the hands of my blessed maker, trusting in the merits of Christ, my Saviour, for the remission of all my sins; my body, I desire, may be decently interred, at the discretion of my executors, hereinafter named; as to my temporal estate, I give and bequeath it in manner and form following: My personal estate, the whole and every part, it is my will and desire should be kept together, and improved to the best advantage, till all my guardian accounts are closed finally. The profits of which personal estate, I give and bequeath to my beloved wife Elizabeth, to be by her received annually, that is to say, and I would be understood to mean, the thirds thereof. I give and bequeath unto William Hockaday Floyd fifty pounds, for the purpose of giving him an education; and I do hereby nominate and appoint Robert S. Ware, William Parish and John Saunders, the executors of this my last will and testament; as witness my hand and seal, this 23d day of March, 1799.

JOHN HOCKADAY, [SEAL.]

Signed, sealed and confirmed in the presence of us,
EDWARD JONES,
GEORGE BAKER,
WILLIAM ALLEN.

At a court held for New Kent county, the 11th day of July, 1799, this last will and testament of John Hockaday, deceased, was put

into court by Robert S. Ware, one of the executors therein named, and sworn to by him, and being proved by the oaths of Edward Jones and George Baker, two of the witnesses thereto subscribed, is ordered to be recorded; and on the motion of said executor, certificate is granted him for obtaining probate thereof in due form, he having made oath and entered into bond with security, according to law. Wm. Parrish, one of the executors named in said bill, appeared in court and refused to qualify.

Test: WM. B. CLAYTON.
A copy test: B. DANDRIDGE.

STATE OF VIRGINIA, *New Kent County, to wit:* [L. S.]

I, Bartholomew Dandridge, clerk of the county court of said county, and keeper of the records of wills and testaments in and for said county, do hereby certify that the foregoing is a true copy of the last will and testament, and the probate thereof, of John Hockaday, deceased, truly copied from the records of said county court, and now remaining in my office.

In testimony whereof, I have hereunto subscribed my hand and affixed my official seal of the county court aforesaid, this 16th day of April, 1821.

B. DANDRIDGE.

NEW KENT COUNTY, *State of Virginia, to wit:*

I, William Douglass, a justice of the peace of said county, do hereby certify that B. Dandridge has been duly qualified as clerk of said county.

Given under my hand and seal this 28th day of May, 1821.

W. DOUGLASS, [SEAL.]

The representatives of John Hockaday are entitled to the proportion of land allowed a captain of the continental line for three years' service.

SAMUEL COLEMAN.

Council Chamber, July 23d, 1808.

WILLIAM H. CABELL.

The Register of the Land Office for the State of Virginia, will please to issue in the name of Joseph Ladd, his heirs or assigns, a warrant for whatever land may be due the late John Hockaday for his services as an officer in the Army of the United States, in the late war with Great Britain, I having received full value of the said Ladd, for the said land, and his receipt shall be sufficient for your issuing the said warrant for the same.

Witness my hand and seal, this sixth day of August, one thousand eight hundred and eight.

RO. S. WARE, [SEAL.]
Ex. JUD. HOCKADAY.

Witnesses:
WM. HOCKADAY,
ISAAC DIGGES,
WM. AMMONS.

STATE OF VIRGINIA, *to wit:*

I, William G. Pendleton, register of the land office, of the State aforesaid, do hereby certify the foregoing to be true copies of the original certificate of council, and of the assignment filed therewith, on which four military warrants of 1,000 acres each, numbers 5,520, 5,521, 5,552, and 5,523, issued on the 9th day of August, 1808, to Joseph Ladd, assignee of Robert S. Ware, ex'r of John Hockaday, dec'd.

Given under my hand and seal of office, at the capitol in the city [SEAL.] of Richmond, this 30th day of March, 1821.

WM. G. PENDLETON,
*Reg. L. Office.*

And thereupon a certain writ of subpœna, in chancery, issued from the clerk's office of said court, as follows, to wit:

UNITED STATES OF AMERICA, DISTRICT OF OHIO, *ss.*

To the Marshal of said District—greeting:

We command you to summon Henry Brush, Matthew Ray, Abraham Hoffman, Thomas Taylor, Eli W. Gwynne, Aquilla Toland, James Barnett, Matthew Bonner, and Joseph Hoffman, citizens of, and residents in the State of Ohio, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States, for the seventh circuit and district of Ohio, aforesaid, at Columbus, on the third Monday in the month of December next, to answer a bill in equity exhibited against them, by John H. Ware, Edmund M. Ware, William W. Ware and Susan M. Ware, widow of Robert S. Ware, deceased, and Mary W. Ware, and Roberta Anna Ware, infant children of the said Robert S. Ware, by Susan M. Ware, their mother, guardian, and next friend, citizens of, and resident in the State of Virginia; and this they shall in no wise omit, under the penalty of the law, and have then there this writ.

Witness, the Honorable John Marshall, chief justice of the United States, this 9th day of November, 1831, and in the [SEAL.] 56th year of the independence of the United States of America.

Attest: WILLIAM MINER, *Clerk.*

Endorsed.

We, John M. Goodenow and Samuel J. Bayard, acknowledge ourselves, jointly and severally, security for all costs for which the plaintiffs may be liable in this suit.

SAMUEL J. BAYARD,
JNO. M. GOODENOW.

And afterwards, to wit: at the December term of said court, in the year last aforesaid, being the time to which said writ was made returnable, came the said marshal and returned the same to the court here endorsed, as follows, to wit:

"I served the within subpœna by giving a copy thereof to Eli W. Gwynne on the 29th November, 1831; by giving a copy to Henry Brush, and also a copy of the bill in chancery, on the 5th December, 1831; by leaving a copy of the subpœna at the usual place of abode of Matthew Bonner, on the day last mentioned, and also, to Matthew Ray, Thomas Taylor, and Aquilla Toland, the other defendants, not found within my bailiwick.

JOHN PATTERSON, *Marshal.*"

And thereupon this cause was continued; and afterwards, to wit: on the fourth day of June, Anno Domini, one thousand eight hundred and thirty-two, came the defendants, Matthew Rea, Eli W. Gwynne, and Aquila Toland, by Gustavus Swan, Esquire, their solicitor, and filed their several answers to the complainants' said bill, which are in the words and of the tenor following, to wit:

The separate answer of Matthew Rea to the bill of complaint exhibited against him and others in the 7th circuit court of the United States in the district of Ohio, by John H. Ware and others, complainants.

This defendant saving and reserving to himself, now and at all times hereafter, all and all manner of benefit of exception to the manifold uncertainties, insufficiencies, imperfections, and untruths in said complainants' said bill contained, for answer thereunto, or unto so much thereof as the defendant is advised is material or necessary for him to make answer *unto*, he answers and saith: That he is a stranger to the said complainants, and knows not whether they are or are not the heirs and only heirs and legal representatives of John Hockaday, deceased, and requires further proof. This defendant knows not whether the said Hockaday was or was not an officer in the revolutionary war of the Virginia line, and knows not whether he was entitled to bounty land, either four thousand acres, or any other quantity, and so far as these matters are matured, he requires full proof. This defendant is entirely ignorant of that Providence of God, set up in the bill, which removed the said Hockaday from this mortal state, and this defendant positively declares that he was ignorant of the said Hockaday's mortal existence, and never heard of such a man until he was shown the bill of the complainants, or a certified copy, and requires full proof of every fact as to such a person, his claims, his heirs, and every matter touching those things set up in said bill.

And this defendant further saith, that so far as the facts stated in said bill tend to charge him, this defendant, and to set up claims in their own right, or as heirs to said Hockaday, he is a stranger, and

requires full proof. This defendant knows nothing of the will of said Hockaday, or who was his executors, and requires proof of those facts. This defendant further saith, that he does not know, and, as he is advised, it is not material as it concerns him whether said executors of said Hockaday did or did not settle said estate, but so far as it may be material, he, this defendant, requires full proof of those allegations. And this defendant repeats that he knows nothing concerning the said Hockaday, his death, heir or heirs, their intermarrying, his will, his executors, the disposition that was made of his estate, the death of the heirs of Hockaday, or their heirs, or who they married, or what rights they have or pretend to have to the lands mentioned in the bill, and requires full proof of all these things. And this defendant further saith, that he has no knowledge of Joseph Ladd, mentioned in said bill; and this defendant is also a stranger to the certificate mentioned as dated the 23d of July, 1808, and to the manner in which the same was transferred to the said Ladd by Robert Ware, and to the validity or invalidity of said transfer, and requires proof also of these allegations. This defendant knows not to whom the warrants in the bill mentioned *was* issued, or by whom the same was located or surveyed. This defendant is ignorant of the consideration paid by Ladd, and knows not whether the same was or was not adequate. This defendant denies that he is in possession of any part of survey No. 6269, but is informed and believes that the tract of land of three hundred acres is in survey No. 6242, the title deed of this defendant not specifying either the number of entry or survey. And this defendant, in further answering, saith, that in the month of March or April, 1820, that this defendant and his brother, Robert Rea, made an agreement with one John McLain, of Ross county, in this State, for the following tract of land, to wit: described, beginning at a stake, a post oak, by No. 70 E., 22 links distant, southeast corner of John Haines's entry No. 5531, in the line of David Stephenson's entry No. 5594, running south 20 W. 452 poles, to three elms in the line of a survey made for the representatives of Peter Helphestine, deceased, No. 4387; thence west with said line 130 poles, to two bur oaks and a black walnut; thence N. 20 E., 366 poles, to a stake in a prairie in the line of said Haines's survey; thence with said line N. 54 E., 160 poles, to a stake bearing S. 35, E. 43 links, from a post oak; thence S. 51, E. 32 poles, to the beginning: containing 329 acres, being conveyed by patent bearing date 22d day of February, 1816, to John McLain.

This defendant avers that said Robert Rea was jointly and equally interested in said contract. By this contract this defendant and his said brother Robert was to pay the said McLain for said land two dollars per acre. This defendant and his said brother, immediately after making this contract, took possession and commenced improvement, and afterwards this defendant purchased the half from his brother, and has continued in possession ever since, and is now in possession thereof, having made large improvements costing seven or eight hundred dollars. This defendant further saith, that afterwards

having made full payment for said land on the 27th day of July, 1822, the said McLain executed a deed for the whole of said land to said Robert Rea, which deed or a copy will be exhibited on the trial of this cause. Afterwards, to wit, on the 8th day of April, A. D. 1826, the said Robert Rea, by a deed of conveyance duly executed, conveyed to this defendant one moiety of said tract of land, and afterwards, on the 6th day of July, A. D. 1830, the said Robert Rea having departed this life, his legal heirs executed a deed for the other moiety to this defendant, which deed or copies will be exhibited on the final hearing of this cause, by which your orator claims to hold the title both at law and equity of, in, and to said tract of land. This defendant positively denies that he had any knowledge whatever at the time the purchase was made of McLain, or at any time since; that any of said complainants or their ancestors named in the bill, or any person or persons whomsoever, had ever claimed any right, title, interest, estate, or claim in the land aforesaid, except the person of whom he and his brother purchased, to wit, said McLain, who claimed to be the patentee, and this defendant then and still believes was and is the patentee; but this defendant admits he never *seen* said patent, and this defendant positively denies all deeds, papers, and evidence of facts from which any notice as to him of any adverse claim in law or equity could be inferred. This defendant did believe, and he believes his brother so believed, that he was purchasing of the patentee; and if they did not, this defendant is wholly ignorant of the manner in which McLain derived title. As to the manner in which said McLain procured his patent, whether from Ladd or Hoffman, or from whom this defendant knows not, nor did he inquire, believing that McLain was an honest man, and the patentee. And this defendant denies all fraud and unlawful combination with which he stands charged in and by said bill—without that *that* there is any other matter or thing material or necessary for him to make answer unto, and not herein and hereby well and truly answered unto, confessed or avoided, traversed or denied, the same is true. And this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

G. SWAN, *Sol. for Deft.*

THE STATE OF OHIO, *Madison county, ss.*

Personally came Matthew Rea, who makes the above answer, and made solemn oath, that the matters and things therein contained, so far as related to be within his own knowledge, are true, and so far as related to be information derived from others, he believes the same to be true.

MATHEW REA.

Subscribed and sworn to, this 12th day of May, 1832.

FREDERICK GRIMKE,

*Pres't Judge 6th Ct. Court Com. Pleas of Ohio.*

The separate answer of Eli W. Gwynne, to the bill of complaint exhibited against him and others, in the 7th circuit court of the United States, and district of Ohio, by John H. Ware and others, complainants.

This defendant, saving and reserving to himself, now and all times hereafter, all, and all manner of benefit of exceptions to the manifold uncertainties, imperfections, insufferences and untruths, in said complainants' said bill of complaint contained, for answer thereunto or unto so much thereof as this defendant is advised is material or necessary for him to make answer *unto*, he answers and says: that he is entirely unacquainted with the complainants, and every of them, and can neither admit or deny their claims to be heirs of John Hockaday; that he knows nothing of John Hockaday mentioned in the bill, nor does he know who were the heirs of said Hockaday, who is living, with whom they intermarried, or of their death, or who is or are heirs to them or any of them; that he knows not whether said Hockaday left a will or not, or whether he had executors who performed faithfully or abused their trust. Nor does he know whether said Hockaday was an officer of the Virginia line on continental establishment or not, and entitled to bounty land, and if entitled to any, how much. And this defendant does not know, nor never was acquainted with Joseph Ladd, in the bill mentioned, and has no knowledge of the contract charged to have been collusively and fraudulently made between the said Ladd and the executor or executors of said Hockaday. This defendant is ignorant how, or upon consideration, the right passed to Ladd, and cannot admit or deny its fairness or adequacy; but so far as all these matters may be material, he requires full proof of them and every of them.

And this defendant, in further answering, saith: that he claims two hundred acres, part of survey 6245, by a deed of conveyance from David Gwynne and wife, bearing date August 20th, 1828, namely, for two hundred acres of land; which deed was duly executed and recorded in Madison county, in this district, the original or a copy of which will be exhibited on the hearing of this cause.

This defendant, in further answering, saith: that he believes that said two hundred acres of land was patented about the year 1814, to one John Hoffman, but how the said Hoffman obtained his patent, this defendant has not been informed. John Hoffman, about the same year, by deed, conveyed the same tract of land to one Benjamin Crockett, who, about the year 1815, conveyed the same, by deed, to Thomas Gwynne, and he to David Gwynne about the year 1824; and David Gwynne conveyed to this defendant, as aforesaid, which deed of conveyance *are* of record in Madison county aforesaid, the originals or a copy of which will be exhibited on the hearing, if required.

This defendant further saith, that he paid a full and fair consideration for said land to said David Gwynne, and when he, this defendant,

purchased and paid therefor, and since, until the complainants' bill was filed, this defendant never heard of or knew that any claim adverse to this defendants, and those from and through whom he claims, existed; nor had this defendant the slightest intimation from any source whatever, that there was or were such claim or claims.

And this defendant, in further answering, saith: that he claims the legal estate to the other three hundred acres, derived as follows, to wit: on the 22d day of August, 1827, one David A. Hoffman executed a deed for the same to this defendant, in which is recited, that the same was patented to John Hoffman, who conveyed the same to Abraham Hoffman by deed dated June 14th, 1820, and the same was conveyed by said Abraham Hoffman to Adam E. Hoffman, by deed dated 9th April, 1823, and by Adam E. Hoffman conveyed to the said David A. Hoffman by deed dated August 18th, 1827, being entry No. 6245; and this defendant saith, that when he, this defendant, purchased of said David A. Hoffman, and paid for said land, which purchase was fair and upon a bona fide consideration, and without any notice or intimation whatever, that there was any adverse claim in the complainants or either of them; he had no manner of notice that there was any claimant other than those from and through whom he, this defendant, derived title; and the first knowledge that this defendant had of the claims of the complainant was the service of the subpœna and the examination of the bill or a copy thereof in this case; and this defendant denies that, as against him, said complainants have any right or title to said lands either in law or equity. And this defendant denies all fraud and unlawful combination with which he stands charged in and by the bill of the complainants, and denies positively that he has or ever had any knowledge of any fraud, collusion or unlawful combination, between any or all the persons named as defendants to said bill; on the contrary, this defendant had no reason to doubt, nor did he doubt but what the whole transaction, of which he was entirely ignorant, was fair, and that the said John Hoffman was honestly the patentee of said land; and this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained, &c.

G. SWAN, *Sol. for Def't.*

THE STATE OF OHIO, *Franklin county, ss.*

Personally came Eli W. Gwynne, who made this answer above, and made oath that the matters and things therein contained, so far as related to be within the knowledge of the said defendant, are true, and so far as related therein to be information derived from others, he believes the same to be true.

E. W. GWYNNE.

Subscribed and sworn to, this 15th May, A. D. 1832, before me,
THOMAS WOOD,
*Justice of the Peace.* [SEAL.]

**The separate answer of Aquilla Toland to the bill of complaint exhibited against him and others, in the 7th Circuit Court of the United States, and district of Ohio, John H. Ware and others, complainants.**

This defendant, saving and reserving to himself now, and at all times hereafter, *on* and all manner of benefit of exception to the manifold uncertainties, insufficiencies, imperfections and untruths in said complainants' said bill of complaint contained, for answer thereunto, or unto so much thereof as the defendant is advised is material or necessary for him to make answer unto, he answers and says: That he is entirely unacquainted with the complainants and every of them, and can neither admit or deny the capacity in which they appear in the bill. That he knows nothing of John Hockaday, or who were his heirs, with whom they or any of them intermarried, of their death, or who were heirs to them or any of them; that he knows not whether the said Hockaday left a will or not, or had executors who performed or abused their trust; nor does he know whether the said Hockaday was an officer in the Virginia line or continental establishment, and entitled to bounty land; and if entitled to any, how much, or whether he died before he obtained a warrant. And this defendant does not know, nor ever did know Joseph Ladd, or how and upon what consideration, or by what means he obtained the warrant in the name of said Hockaday; but so far as these matters are material he requires full proof of them, and every of them.

This defendant, in further answering, saith, that on the 6th day of October, in the year of our Lord one thousand eight hundred and twenty-six, one Frederick Mousier and wife, by deed of conveyance duly executed, and for the consideration of six hundred dollars, paid by this defendant to the said Mouser, conveyed to this defendant three hundred acres of land, being part of survey on warrant No. 5,521, beginning at two bur oaks and a hickory, northeast corner to Robert Sharp's entry, No. 5,897, running with his line N. 44, W. two hundred poles to a stake, thence N. 273 poles to an elm, thence east 140 poles to a bur oak, thence south 414 poles to the beginning, as will more fully appear by said deed to this defendant, which said deed or a copy thereof will be produced on the hearing of this cause. And this defendant positively denies any notice whatever of the claim, right, title, or interest of the said Hockaday, in said land, or of his heir or heirs, or the heir or heirs of his heir or heirs, or the plaintiffs, at or since the purchase of the said Mouser; nor did this defendant ever hear of the complainants, except he *seen* the name in the patent, or their ancestors, until he was served with a subpœna in this cause. This defendant admits that the said tract of land was patented to the said Mouser, but this defendant denies that he had or has any knowledge of any fraud practised by any one in procuring the certificates, the warrant, any assignment of the warrant, plat or certificates, or in procuring the patent. He, this defendant, when he purchased, did believe, and had every reason to believe, that the said Mouser was the bona fide owner of the land, the said

Mouser having the best possible evidence of ownership—a patent from the United States; and this defendant is advised and insists that it is not competent for the complainants, until they establish notice upon this defendant, to go behind the patent for said land. This defendant, after he purchased and paid for the land as aforesaid, and fully believing he was the lawful owner, and never having heard of any claim in law or equity adverse to his or the said Mouser, took possession of said land, and has been in possession ever since, and has made large and valuable improvements thereon, in which improvements he has expended about the sum, as he verily believes, of seven or eight hundred dollars. And this defendant, in further answering, saith, that when he purchased and received a conveyance for said land, and until he paid for the same, and some time after, he did not see the patent to said Mouser, although said Mouser informed him he had one for said land; and this defendant further saith that he did not enquire further of Mouser than to ascertain if he had a patent from the government, and being satisfied upon this point, this defendant felt himself secure. And this defendant denies all fraud and unlawful combination with which he stands charged in and by said bill, without that, that there is any other matter or thing material or necessary for him to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, or avoided, traversed, or denied, the same is true; and this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained, &c.

G. SWAN,
*Sol. for Def't.*

THE STATE OF OHIO, MADISON COUNTY, *ss.*

Personally came Aquilla Toland, who makes the above answer, and upon oath saith, that the matters and things therein stated to be within his own knowledge are true, and so far as stated to be information derived from others, he believes the same to be true.

AQUILLA TOLAND.

Subscribed and sworn to, this 12th day of May, A. D. 1832.

P. McLENE,
*Justice of the Peace.* [SEAL.]

And afterwards, to wit, at the July Term of said court, in the year last aforesaid, the following agreement was filed, to wit:

The Heirs of WARE,
*vs.*
HENRY BRUSH, and others.

There is to be no answer or rule for answer in this case as to the defendant Brush, with whom there is a compromise of the matter in

controversy as to the interest he has in the same, and the land he claims; and the bill is to be dismissed as to him when he complies with the contract by paying or affixing the payment according to said contract, July 12th, 1832.

H. BRUSH, *Def't.*
JNO. M. GOODENOW,
*Sol. for Compl'ts.*

And afterwards, in this same term, to wit, on the seventeenth day of July, anno Domini, one thousand eight hundred and thirty-two, came the defendant, Thomas Taylor, in his own proper person, and filed in court here his answer to the complainants' said bill of complaint, which is in the words and of the tenor following, to wit:

"The separate answer of Thomas Taylor to the bill of complaint exhibited against him and others in the 7th circuit court of the United States, district of Ohio, by John H. Ware and others, complainants.

This defendant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exceptions to the manifold uncertainties and imperfections in the said complainants' bill of complaint contained, for answer thereunto, or unto so much thereof as materially concerns this defendant to make answer unto, he answering, says, that he is wholly unacquainted with the complainants and every of them, and can neither admit nor deny the character in which they appear in their bill; that he has no knowledge of John Hockaday, or his heirs, or with whom they or either of them intermarried, of their deaths, or who were heirs to them or any of them. That he knows not whether the said Hockaday left a will or not, or whether his executors, if any, executed or abused the trust: nor does he know whether the said Hockaday was an officer in the Virginia line in the continental establishment, and entitled to bounty land; and if entitled to any, how much, or whether he died before he obtained the warrant. And this defendant now is and ever has been wholly unacquainted with Joseph Ladd, nor does he know how and upon what consideration, or by what means he obtained the warrant in the name of the said Hockaday; but so far as these matters are set forth in the complainants' bill, he therefore requires full proof of them and every of them. This defendant, further answering, saith, that on the first day of March, in the year of our Lord one thousand eight hundred and twenty-six, that one Bela Latham, by deed of conveyance duly executed and delivered for the consideration of three hundred dollars paid by this defendant to the said Latham, conveyed to this defendant one hundred and thirty acres of land, being survey No. 6,244, (six thousand two hundred and forty-four) on warrant No. 5,521, (five thousand five hundred and twenty-one.) Beginning at a black oak in the southerly line of the representatives of Mathew Arbuckle's survey, No. 3,900, and northerly corner to Robert Mean's entry, No.

5,971; thence with said line N. 67, W. 130 poles to a white oak in said line; thence S. 23, W. 160 poles to four white oaks; thence south 67 E. 130 poles to three hickories in the line of said Mean's said entry; thence with said line N. 23 E. 160 poles to the beginning, containing one hundred and thirty acres, be the same more or less, as will more fully appear by said deed to this defendant, a copy of which deed will be exhibited at the trial of this cause.

And this defendant, further answering, positively denies any notice of the claim, right, title, or interest of the said Hockaday in said land, or of his heir or heirs, or the heir or heirs of his heir or heirs, or the plaintiffs, at or since the purchase of the said Latham; nor did this defendant ever hear of the complainants, except he seen their names in the patent, or of their ancestors until he was served with process of subpœna in this cause. This defendant admits that said land was patented to the said Latham, but this defendant denies that he had, or has any knowledge of fraud practised by any one in procuring the certificates of the warrant, or the assignment of the warrant, plat, or certificate, or in procuring the patent; he, this defendant, when he purchased, did believe, and had good reason to believe, that the said Latham was the bona fide owner of said land, he, the said Latham, having the best possible evidence of title—a patent from the United States. And this defendant is advised, and insists that it is not competent until they establish notice upon this defendant, to go behind the patent for said land. This defendant, after he had purchased and paid for said land, as aforesaid, and fully believing he was the lawful owner, and not having knowledge of any claim in law or equity adverse to him or the said Latham, went into possession of said land, and has remained in possession ever since, and has made large, lasting, and valuable improvements on the same. And this defendant, further answering, saith, that until some time subsequent to his purchase and payment, and the receipt of his conveyance, did not see the patent to the said Latham. This defendant further saith, that he made no further inquiry of said Latham than to ascertain that he had a patent from the Government; and, being satisfied upon that point, felt himself secure. And this defendant denies all fraud and unlawful combination with which he stands charged in and by the said bill of complaint; without that, that there is any other matter or thing material or necessary for this defendant to answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; all which matters and things this defendant is ready to aver and prove as this honorable court may direct and award; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS TAYLOR.

THE STATE OF OHIO, *Madison County, ss*:

Be it remembered that heretofore, to wit, on the 6th day of July, in the year of our Lord one thousand eight hundred and thirty-two,

personally appeared before me the undersigned, an acting justice of the peace within and for the county aforesaid, Thomas Taylor, the within named respondent, who, being duly sworn, saith, that the matters and things set forth in this answer, so far as stated to be within his own knowledge, are true, and so far as derived from the information of others, he verily believes to be true.

Sworn to and subscribed before me, this day and year above written.

P. McLENE, *J. P.*

And thereupon this cause was continued; and afterwards, to wit, on the seventeenth day of September, in the year last aforesaid, a certain *alias* writ of subpœna in chancery issued from the clerk's office of said court, as follows, to wit:

UNITED STATES OF AMERICA, *District of Ohio, ss*:

To the marshal of said district greeting: We again command you to summon Abraham Hoffman, Joseph Hoffman, and James Barnett, citizens of, and residents in the State of Ohio, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States for the 7th circuit and district of Ohio, aforesaid, at Columbus, on the third Monday in the month of December next, to answer a bill in equity exhibited against them, (Henry Brush and others,) by John H. Ware, Edmund M. Ware, William M. Ware, and Susan M. Ware, widow of Robert S. Ware, deceased, and Mary W. Ware, and Roberta Anna S. Ware, infant children of the said Robert S. Ware, by Susan M. Ware, their mother, guardian and next friend, citizen of, and resident in, the State of Virginia; and this they shall in no wise omit, under the penalty of the law, and have then there this writ.

Witness the Honorable John Marshall, Chief Justice of the United States, this 17th day of September, 1832, and in the [SEAL.] 57th year of the independence of the United States of America.

Attest: WM. MINER, *Clerk.*

And afterwards, to wit, at the December term of said court, in the year last aforesaid, being the time to which said writ was made returnable, came the said marshal and returned the same to the court here, endorsed as follows:

"I served this subpœna on Isaac Hoffman, by delivering him a copy thereof, on the 7th of September, 1832—the other defendants not found.

JOHN PATTERSON, *Marshal.*"

And thereupon the defendant, Matthew Bonner, by Messrs. Creighton and Bond, his solicitors, filed his answer to the complain-

ants' said bill, which is in the words and of the tenor following, to wit:

"The separate answer of Matthew Bonner to the bill of complaint exhibited against him and others in the seventh circuit court of the United States for the district of Ohio, by John H. Ware and others, complainants.

This defendant, saving and reserving to himself, now and all times hereafter, all and all manner of benefit of exceptions to the manifold uncertainties, imperfections, insufficiencies and untruths in said complainants' said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, *he* answers and says: That he is entirely unacquainted with the complainants and every of them, and can neither admit or deny their claims to be heirs of John Hockaday. That he knows nothing of John Hockaday, mentioned in the bill; nor does he know who were the heirs of said Hockaday; who is living, with whom they intermarried, or of their death, or who is or are heirs to them or any of them. That he knows not whether the executor or executors of said Hockaday performed faithfully or abused their trust. This defendant does not know, nor never was acquainted with Joseph Ladd, in the bill mentioned; and has no knowledge of the contract charged to have been collusively and fraudulently made between the said Ladd and the executor of said Hockaday. This defendant is ignorant how or for what consideration the right passed to Ladd, and cannot admit or deny its fairness or adequacy; but so far as all these matters may be material, he requires full proof of them. And this defendant, in further answering, saith, that he purchased five hundred and sixty acres, part of survey No. 6,238, of Silvanus Bourne, together with other lands, and also fifty-five acres of the survey No. 7,943, from the said Bourne, and forty acres of the last mentioned survey from John Hoffman; a copy of the deeds from the said Bourne and Hoffman to said defendant is attached to this his answer; which said Bourne purchased the said two parcels of land from William Doherty, marshal of the district of Ohio, as the property of the said John Hoffman, a copy of which said deed is also attached with this his answer; which said two surveys were patented to the said John Hoffman; a copy of the patent for the survey No. 7,943, of 600 acres, (which patent is in the possession of this defendant,) is also attached to this his answer. And this defendant, about four years since, sold and conveyed unto James Abenathy, of Champaigne county, ninety-six acres of the same 560 acres, and soon afterwards ninety acres, part of the said tract; and some time since sold and conveyed to Jacob Richards eighty-seven acres of the same tract; and has sold, but not yet conveyed, to Barnett Richardson ninety-seven acres of the same; and to David Douglass ninety-three acres, part of the said tract of 560 acres. He also, several years since, sold, but has not yet conveyed, about forty acres, part of the survey No. 7,943, which he purchased of Bourne and

Hoffman, in the manner above described, to Robert Scott—all of whom are in the possession of their said tracts, so by them purchased, and some of them have made valuable improvements on the same. This defendant and the above named purchasers from him have regularly paid all taxes on said lands since the time he purchased them, as aforesaid. This defendant further saith that he paid a full and fair consideration for said land, to said Bourne and said John Hoffman; and since, until the complainants' bill was filed, this defendant never heard of or knew that any claim adverse to this defendant, and those from and through whom he claims, existed; nor had this defendant the slightest intimation, from any source whatever, that there was or were such claim or claims; and this defendant denies that, as against him, said complainants have any right or title to said lands, either in law or equity. And this defendant denies all fraud and unlawful combination with which he stands charged in and by the bill of the complainants; and denies positively that he has or ever had any knowledge of any fraud, collusion, or unlawful combination between any or all the persons named as defendants to said bill; on the contrary, this defendant had no reason to doubt, or did he doubt, but what the whole transaction, of which he was entirely ignorant, was fair, and that the said John Hoffman was honestly the patentee of said land. And this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

MATTHEW BONNER.
CREIGHTON & BOND,
*Sol's for Def't.*

UNITED STATES, 7TH CIRCUIT COURT, *Ohio District.*
*December Term*, 1832.

Personally appeared, in open court, Matthew Bonner, who, being duly sworn, says, that the facts contained in the foregoing answer, so far as stated from his own knowledge, are true, and so far as stated from the knowledge of others he believes the same true; and further he says not.

MATTHEW BONNER.

Sworn to and subscribed in open court, Dec. 17, 1832.

WM. MINER, *Clerk.*

Copy of a Patent to John Hoffman for 600 acres of land, Survey No. 7,943:

James Madison, President of the United States of America—To all to whom these presents shall come, greeting:

Know ye, that in consideration of military services performed by Lawrence Manning, (a lieutenant for the war,) and by John Hockaday, (a captain for three years) to the United States, in the Virginia line or continental establishment, and in pursuance of an act of Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and

soldiers of the Virginia line or continental establishment, to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and other acts of the said Congress amendatory of the said act, there is granted by the United States, unto John Hoffman, assignee of Joseph Hoffman, Rachael Hoffman, Daniel Hoffman, Abraham Hoffman, Adam Hoffman, Catharine Hoffman and David Hoffman, assignees of George Hoffman, assignee of Peter Manifold, assignee of Lawrence Manning, administrator of the said Lawrence Manning, deceased, and also assignee of Joseph Ladd, assignee of Robert S. Ware, executor of the estate of the said John Hockaday, deceased, a certain tract of land, containing six hundred acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing date the first day of August, in the year of our Lord, one thousand eight hundred and fifteen, and bounded and described as follows, to wit: survey of six hundred acres of land on two military warrants, viz: five hundred acres on part of warrant No. 5,534, in favor of the said Peter Manifold, (the whole thereof being for two thousand six hundred sixty-six and two thirds acres,) and one hundred acres on part of warrant No. 5,520, in favor of the said Joseph Ladd, (the whole thereof being for one thousand acres) on the waters of Deer Creek, beginning at a hickory and bur oak in the west line of the representatives of Peter Helphins' ine's survey No. 4,515, about 90 poles north from the southwesterly corner to said survey, northeasterly corner to Peter Pelham's survey No. 6,384; thence with Helphinstine's line, north 238 poles to two hickories and two white oaks, northwesterly corner to said survey; thence east 51 poles to a stake in the line of Robert Means' survey No. 4,424; thence N. 42, W. 58 poles to two white oaks and a black oak, easterly corner to Joel Stokes' survey No. 4,214; thence S. 42, W. 320 poles to a hickory, black oak and red oak, southerly corner to said survey; thence N. 42, W. 140 poles to two hickories and a white oak in the line of said survey, northeasterly corner to Oliver Simpson's survey No. 6,849, 7,565 and 7,566, thence south 460 poles, passing the southeasterly corner of Simpson's survey, at 130 poles to a stake in a prairie corner to said Pelham's survey; thence with his line N. 42, E. 432 poles to the beginning, with the appurtenances. To have and to hold the said tract of land, with the appurtenances, unto the said John Hoffman and his heirs and assigns forever.

In witness whereof, the said James Madison, President of the United States of America, hath caused the seal of the general land office to be hereunto affixed, and [L. S.] signed the same with his hand at the city of Washington, the twenty-second day of February, in the year of our Lord, 1816, and of the Independence of the United States of America the fourteenth.

By the President: JAMES MAEISON.

JOSIAH MEIGS,

*Commissioner of the General Land Office.*

I certify that Lawrence Manning and John Hockaday were originally entitled to the bounty land granted by the within patent to John Hoffman, who claims under the said Manning and Hockaday.

Given at the General Land Office of the United States, this 22d of February, 1816.

JOSIAH MEIGS.

Recorded in the General Land Office, in vol. 7, page 462, of patents of land granted to the Virginia line on continental establishment.

W. B. VAN ZANDT.

Copy of deed from William Doherty, marshal of the Ohio district, to Silvanus Bourne, for sundry tracts and parcels of land.

"To all to whom these presents shall come, I, William Doherty, marshal of the district of Ohio, send greeting:

"Whereas, at the September term of the circuit court of the United States in and for the seventh circuit, and district of Ohio, in the year eighteen hundred and nineteen, Matthew Hobson recovered a judgment in said court in a certain action of debt against John Hoffman and Cadwallader Wallace, for the sum of two thousand dollars debt, and two hundred and forty-six dollars and sixty-six cents damages, together with costs of suit, upon which said judgment the said plaintiff, afterwards, to wit: on the fourteenth day April, in the present year (there being before that time frequent and other writs of execution issued and returned on the said judgment,) caused to be issued a certain writ of execution called a "*aplurius fieri et levari facias*," addressed to the marshal of the district aforesaid, commanding him, that of the goods and chattels of the said defendants, in his bailiwick, he should cause to be made the debt and damages aforesaid, with interest from the seventh day of September, eighteen hundred and nineteen, until paid; also the sum of one hundred and eight dollars and seventy-nine cents, the costs and charges of the said suit; and that, for the want of goods and chattels, he should cause the same to be made of the lands, tenements, and hereditaments of the said defendants, and that he should have the said monies before the said court, at Columbus, on the first Monday of the present month, to be paid to the said plaintiff for his debt, damages, costs, and charges aforesaid; which said writ was duly received by the said marshal, who, not finding any goods or chattels whereon to levy the same, endorsed that fact on said writ; and, thereupon, levied the same on the following lands, the property of the said defendant, John Hoffman, to wit: one tract of five hundred and sixty acres, part of George Hoffman's survey, number 6,238, on the head waters of Treacles creek and the waters of Kings creek, in Champaign county, bounded and described as follows, to wit: beginning at two hickories and a large white oak, northeast corner, to Samuel Smith's survey, No. 4,182; thence south 206 poles to a red oak; thence east 285

poles to two white oaks and a black oak, southeast corner, to Hoffman's said survey; thence north 170 poles to two elms and a hickory; thence N. 11, E. 142 poles to four hickories and a red oak; thence west 349 poles to three hickories and a white oak, in the line of John Campbell's survey, No. 4516; thence south 103 poles to three elms and an ash, southeast corner, to said survey; thence east 38 poles to the beginning; containing five hundred and sixty acres more or less. Also on a tract of fifty-five acres of land, part of George Hoffman's survey No. 7,943, formerly situate in Madison, but now the county of Clarke, bounded and described as follows, viz: beginning at the south corner of Joel Stokes' survey No. 4,214; thence with his line N. 42, W. 140 poles to two hickories and a white oak, northeasterly corner, to Oliver Simpson's survey No. 6,849, 7,565, and 7,666; thence with his line south 185 poles to the northwesterly corner of a tract of land conveyed by John Hoffman to Dennis Lane; thence with his line north 50° E. 124 poles to the beginning; containing fifty-five acres, more or less. Also, on one equal, undivided seventh part of a tract of four hundred and twenty-four acres of land, survey No. 4,152, situate on Crooked creek, in the county of Ross, and bounded and described as follows, to wit: beginning at a white oak on the north side of a branch, the beginning corner of William Rector's survey No. 4,151; thence with his line S. 18, W. 300 poles, crossing a branch at forty-five poles, passing a white oak marked T, at 145 poles, to four hickories on the side of a hill; thence N. 74, E. 108 poles to a white oak; thence S. 41, E. 203 poles to a hickory; thence N. 49, E. 116 poles to a white oak; thence N. 44, W. 295 poles to a red oak; thence N. 14, E. 72 poles to a black oak; thence N. 48 poles to a white oak; thence N. 61, W. 43 poles to two white oaks; thence S. 36½, W. 97 poles to the beginning; containing four hundred and twenty-four acres, more or less. Also, on one equal undivided seventh part of a tract of three hundred acres of land, survey No. 3,671, situate on Hay run, a branch of Deer creek, in the county of Pickaway, and bounded and described as follows, to wit: beginning at an elm and white oak, the beginning corner of said survey; thence west 100 poles, crossing the run at 50 poles, to a stake in a prairie; thence N. 34, W. 102 poles to three white oaks from one root; thence S. 78, W. 58 poles to three white oaks; thence N. 18, W. 200 poles to three white oaks; thence east 48 poles to a hickory; thence N. 13, E. 80 poles to two white oaks and a hickory; thence N. 15½, W. 30 poles to a stake; thence S. 77, E. 129 poles, crossing the branch to a large white oak; thence S. 13, W. 140 poles to two white oaks; thence S. 77, E. 80 poles to two white oaks; thence S. 13, W. 98 poles to a white-oak; thence S. 77, E. 112 poles to the beginning; containing three hundred acres, more or less, with all improvements and appurtenances to the said lands and premises belonging. And, whereas, in virtue of the said execution and levy, the said marshal afterwards caused the said lands and premises to be valued and appraised in all things, as the act in such case made and provided requires; and thereupon, on the fifteenth

day of April, in the present year, duly advertised the said lands and premises to be sold at the door of the court-house in Columbus, in said district, where the said court sets on the sixth instant, which said notice was duly published for thirty days and upwards previous to the said sale, in the Columbus Gazette, a newspaper printed and published at Columbus aforesaid. At which said time and place, and in virtue of the proceedings aforesaid, the said marshal publicly and openly offered all and singular the lands and premises aforesaid at sale, when and where Silvanus Bourne bid for the same as follows, viz: for the tract of five hundred and sixty acres, the sum of eighty-four cents per acre; for the tract of fifty-five acres, the sum of sixty-seven cents per acre; the one-seventh part of the tract of four hundred and twenty-four acres, the sum of eighty-four cents per acre; and for the one-seventh part of the tract of three hundred acres of land, the sum of six dollars and sixty-seven cents per acre; which said several sums of money were equal, respectively, to two-thirds of the amount of the appraised value of the said lands, respectively; wherefore the said several bids of the said Silvanus Bourne were by the said marshal then and there accepted, and all and singular the said lands so levied on as aforesaid, then and there were openly and publicly stricken off and sold to the said Silvanus Bourne for the sums so bid by him as aforesaid, and no person offering or bidding more or as much, all and singular of which said proceedings were by the said marshal duly returned and submitted to the said court at its present June term, when and where the said court, after examining the same, pronounced the said sale to be in all things regular, ordered their clerk to make a minute thereof on their journal, and the marshal aforesaid to execute and deliver to the purchaser, the said Silvanus Bourne, a deed of conveyance for the lands and premises aforesaid, pursuant to the act in such case made and provided.

Now, therefore, know all men by these presents, that I, William Doherty, marshal of the district of Ohio, as well in pursuance and consideration of the premises and proceedings aforesaid, as in consideration of the sum of eight hundred and forty-five dollars and six cents, the aggregate amount of the purchase money aforesaid, the payment whereof by the said Silvanus Bourne to me is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey to the said Silvanus Bourne, his heirs and assigns forever, all and singular the several tracts, pieces, and parcels of land so levied on and sold by me, and particularly described as aforesaid; together with all improvements and appurtenances to the same belonging, and, also all the estate, right, title, interest, property, claim, and demand of him, the said John Hoffman, of, in, and to the lands and premises; to have and to hold all and singular the lands and premises aforesaid, all and any interest or estate which he, the said John Hoffman, had therein at the time of the rendition of the said judgment, or at any time since, as fully as he, the said John Hoffman, could have conveyed the same unto him, the said Silvanus Bourne, his heirs, and assigns forever, and

as fully and amply as I, the said marshal, might, could, or ought to convey the same.

In testimony whereof, I, the said William Doherty, marshal of the district of Ohio, have hereunto set my hand and affixed my seal at Columbus aforesaid, this ninth day of June, in the year of our Lord eighteen hundred and twenty-five. The words "one equal undivided seventh part," on the 2d page; the words "eighty-four," "one-seventh part of the," "six dollars and sixty-seven cents," near the top of the 4th page, being first interlined, and the erasures near the top of the said 4th page being first made.

WM. DOHERTY, [SEAL.]
*Marshal of the District of Ohio.*

Signed, sealed, and delivered in presence of
THOMAS HECKWELDER,
J. M. SMITH.

STATE OF OHIO, *Franklin County, Sct:*

Personally appeared before me, the subscriber, president judge of the court of common pleas, of the 6th circuit in the State of Ohio, including the county of Franklin aforesaid, William Doherty, marshal of the district of Ohio, and who in his official capacity signed the foregoing deed, and who acknowledged the signing, sealing and delivery of the said deed for the uses and purposes in the same expressed.

Witness my hand and seal, this 9th day of June, 1825.

GUSTAVUS SWAN, [SEAL.]

CIRCUIT COURT OF THE UNITED STATES, 7th CIRCUIT,
*Ohio District, June Term*, 1825.

MATTHEW HOBSON, P'ff.
*vs.*
JOHN HOFFMAN and CADWALLADER WALLACE, Def'ts.

In the foregoing cause, the marshal having returned that, by virtue of the executions issued, he had sold certain lands in said return, particularly described, and the court having seen and carefully examined the proceedings of their said marshal in the premises aforesaid, are satisfied that the above sale has in all respects been made in conformity to the provisions of the act of Ohio, entitled "An act regulating judgments and executions," and therefore direct, that their said marshal make to the purchaser a deed for the land so sold and particularly described.

A true Copy.
Attest: HARVEY D. EVANS, *Clerk.* [L. S.]

Fees 66 cents, paid.

Recorded in the recorder's office of Champaign county, in Book G, No. 1., page 79, 80, 81, 82, 83; in Clark county in Vol. C. page 454, &c.

Copy of Deed from Silvanus Bourne and wife, to Matthew Bonner, for sundry tracts and parcels of land:

This indenture, made this twenty-third day of April, in the year of our Lord one thousand eight hundred and twenty-seven, between Silvanus Bourne and Hannah Bourne, his wife, of the town of Wareham, in the State of Massachusetts, of the first part, and Matthew Bonner, of the town of Chillicothe in the State of Ohio, of the second part, witnesseth, that the said Silvanus Bourne and Hannah Bourne, his wife, parties of the first part, as aforesaid, for and in consideration of the sum of five thousand and seven hundred dollars, lawful money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto him, the said Matthew Bonner, the aforesaid party of the second part, all and all manner of lands, tenements, and real estate of every kind, nature, and description whatever, of, in, and unto which they the said parties of the first part, or either of them, have, might, or could have any manner of right, interest, estate, or claim within the State of Ohio, including, or intending to include in this conveyance and grant, not only the following lands now specified and referred to, viz: one hundred and fifty acres, more or less, part of survey No. 10,441, 10,442, and 10,596, in Highland county; three hundred and fifty acres, more or less, survey No. 9,571, in the same county; four hundred acres, more or less, part of survey No. 7,085, in the same county; sixty acres, more or less, survey No. 10,598, in the same county; five hundred and eight acres, more or less, being such parts of survey No. 10,639 and 10,232 in Clermont county, as have not been heretofore conveyed by the said Silvanus Bourne; six hundred acres, more or less, situate in Madison county, and being such part of survey No. 6,348 as has not been heretofore conveyed by the said Silvanus Bourne; four hundred and fifty acres, more or less, situate in said Madison county, and being survey No. 6,350; sixty-three acres, more or less, situate in said Madison county, being the whole of survey No. 10,926, adjoining the northeast corner of survey No. 6,350; fifty-five acres, more or less, being all that part of survey No. 7,943 which the said Silvanus Bourne owns in said Madison county; one hundred and thirty acres more, being survey No. 12,193 and 12,194 in Ross county; one hundred and twenty-nine acres, more or less, being all that part of Charles Scott's survey No. 235, which the said Silvanus Bourne owns, situate in Ross county; the east half of inlot No. 154 in the town of Chillicothe, in said Ross county; five hundred and sixty acres of land, more or less, being all that part of survey No. 6,238, which the said Silvanus Bourne owns in Champaign county; one hundred and seventy-five acres of land, more or less, being the

whole of survey No. 10,323 in Fayette county; sixty acres, more or less, being survey No. 10,950 in Pike county; ninety acres, more or less, being survey No. 11,051 in Pike county; and fifty acres, more or less, being survey No. 10,440 and 10,597 in Brown county. But likewise including, or intending to include, in this conveyance and grant, all other and any lands, tenements, and real estate, situate any where within the State of Ohio, to which they, the said parties of the first part, or either of them, have, might, or could have any right, claim, interest, or estate whatever, whether the same be specially referred to, described or named herein or not, together with all and singular the appurtenances, privileges, and advantages whatsoever unto the lands and premises hereby granted belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents and issues, and profits thereof; and also, all the estate, right, title, interest, property, claim, and demand whatsoever in law or equity of them the said parties of the first, of, in, and to the same or any part or parcel thereof, with the appurtenances. To have and to hold the lands and premises by these presents granted and conveyed, or intended to be granted and conveyed, with every of the appurtenances unto him the said party of the second part, his heirs, and assigns for his own proper use, benefit and behoof forever.

And the said parties of the first part, for themselves and their heirs, covenant and agree to and with the said party of the second part, his heirs and assigns, to warrant, and by these presents forever to defend the lands and premises, and every part and parcel thereof, hereby granted or intended to be granted to the said party of the second part, his heirs and assigns, against them, the said parties of the first part, and their heirs, and against all other persons whomsoever lawfully claiming the same, or any part thereof. And whereas the said Silvanus Bourne has at different times heretofore contracted with different persons for the sale and conveyance of parts of the land by this deed conveyed, and on his part has executed contracts to convey upon the payment or performance of the contract by the purchasers whose obligations, contracts, notes, bonds or agreements he holds for the payment in part or in whole of the consideration on which the conveyance was to be made. And whereas also the said Silvanus Bourne claims that there are several balances, debts, unsettled accounts, engagements, and agreements due to him within the State of Ohio, for lands heretofore sold and conveyed by him, or contracts on his part already performed. Now, it being the express purpose and design of the said Silvanus Bourne, by these presents, to sell, transfer, and assign to the said Matthew Bonner, his heirs and assigns, all and all manner of right, property, interest, claim, or demand, real, personal, or mixed, which he, the said Silvanus Bourne, has, might, or could have on any person or persons, or for property any where within the State of Ohio, but subject to the same incumbrances in relation to the rights of others with whom the said Silvanus Bourne has contracted as aforesaid, as if the said property, debts, and contracts were yet retained by the said Silvanus Bourne. Therefore, these presents further testify that, in further payment of the consideration money in

this indenture before mentioned, he, the said Silvanus Bourne, hereby sells, transfers, assigns, and delivers to him, the said Matthew Bonner, his heirs and assigns forever, all and all manner of right which he, the said Silvanus Bourne, has, might, or could have in and unto any debt, contract, or engagement, note, or obligation whatever now due or to become due, and payable to him, the said Silvanus Bourne, in the State of Ohio; and the said Matthew Bonner, his heirs, executors, or administrators may, and they are hereby fully authorized and empowered for his or their own proper use, to receive or enforce payment and performance of and on any and all the contracts, debts, and engagements before referred to, or to rescind, vacate, or treat the same as nullities, on account of the defalcations of the parties, in the same manner precisely as he, the said Silvanus Bourne, might or could do; it being understood, however, for all such of the said Silvanus Bourne's outstanding contracts, to convey any of the lands included in this deed as he, the said Silvanus Bourne, might be compelled to perform, he, the said Matthew Bonner, or his heirs, shall and will perform, by conveying the said land in such manner as he, the said Silvanus Bourne, might by law be compelled, but in no other way; and in these cases, as in all the others, he, the said Matthew Bonner, is *to* and shall be entitled to whatever of money, goods, chattels, property, or effects now are, or shall become due, and payable from the parties thus entitled to conveyances.

In testimony whereof, the said Silvanus Bourne, and Hannah Bourne, his wife, have hereto set their hands and affixed their seals, the day and year first in this indenture written.

SILVANUS BOURNE, [SEAL.]
HANNAH BOURNE. [SEAL.]

Signed, sealed, and delivered in the presence of us,
BENJ. BOURNE,
ALVIN GIBBS.

STATE OF MASSACHUSETTS, *Plymouth County, sct:*

Personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, Silvanus Bourne, the grantor, who signed the foregoing deed, and acknowledged the signing, sealing, and delivery thereof to be his act and deed, for the uses and purposes in the same expressed. Also at the same time came Hannah Bourne, the wife of the said Silvanus Bourne, who, being above the age of eighteen years, and having also signed the said deed, was by me examined, separate and apart from her said husband, touching the said deed, the contents of which were then and there fully made known to her; whereupon she declared that she did voluntarily and of her own free will and accord sign, seal, and, as her own proper act and deed, deliver the same, without any threat, fear, coercion, or compulsion whatever.

Given under my hand and seal this twenty-third day of April, in the year of our Lord eighteen hundred and twenty-seven.

BENJ. BOURNE, [SEAL.]
*Justice of the Peace.*

COMMONWEALTH OF MASSACHUSETTS, *Plymouth, ss:*

I, John B. Thomas, clerk of the judicial courts for the county of Plymouth, hereby certify that Benjamin Bourne, Esquire, is a justice of the peace for the same county, duly appointed, qualified, and acting under the authority of said commonwealth, and that the foregoing signature, purporting to be the signature of the said justice, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the courts, this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and twenty-seven.

JNO. B. THOMAS. [SEAL.]

This deed is recorded in the recorder's office of Champaign county, in book G, No. 1, pages 490, 91, 92 and 93.

Copy of deed from John Hoffman to Matthew Bonner for 40 acres of land, more or less, part survey No. 7,943, in Madison county.

This indenture, made this first day of December, in the year of our Lord one thousand eight hundred and twenty seven, between John Hoffman, of the county of Pickaway, in the State of Ohio, of the one part, and Matthew Bonner, of the town of Chillicothe, and State aforesaid, of the other part, witnesseth: That the said John Hoffman, for and in consideration of the sum of twenty dollars current money of the United States of America, to him in hand paid, the receipt whereof he doth hereby acknowledge, and forever acquit and discharge the said Matthew Bonner, his heirs, executors, and administrators, hath granted, bargained, sold and confirmed, and by these presents doth grant, bargain, sell and confirm to the said Matthew Bonner, his heirs and assigns, forever, all that tract or parcel of land lying and being in the county of Madison, in said State of Ohio, and bounded and described as follows, to wit: Beginning at two hickories and two white oaks, northwesterly corner, to the representatives of Peter Helphinstine's survey, No. 6,384; thence east fifty-one poles to a stake in the line of Robert Means' survey, No. 4,424; thence N. 42, W. 58 poles, to two white oaks and a black oak, easterly corner, to Joel Stokes' survey, No. 4,214; thence with his line S. 48, W. 320 poles, to a hickory, black oak, and red oak, southerly corner, to said survey, and corner to a tract of 55 acres of land that now belongs to said Bonner; thence with said 55 acres S. 38, W. 140 poles, to a jack oak and white oak, westerly corner, to the tract of 540 acres of land conveyed by said Hoffman to Dennis Lane; thence with his line N. 50, E. 450 poles, to two bur oaks, his north corner; thence south ten poles, to the beginning, containing forty acres, be the same more or less, which is a part of George Hoffman's survey, No. 7,943, and which said survey was granted unto the said John Hoffman by patent, bearing date the 22d February, 1816. Together with all improvements and appurtenances whatsoever to the said premises belonging or in any wise appertaining; and all the estate, right, title, interest,

claim and demand of him, the said John Hoffman, of, in and to the same: To have and to hold the land hereby conveyed, with all the premises and every part and parcel thereof, with every of the appurtenances, unto the said Matthew Bonner, his heirs and assigns, forever. And the said John Hoffman and his heirs, all the premises hereby bargained and sold, with the appurtenances, unto the said Matthew Bonner and his heirs and assigns against the said John Hoffman and his heirs, and all and every other person or persons whomsoever, doth and will warrant and forever defend by these presents. In testimony whereof the said John Hoffman hath hereunto set his hand and seal, the day and year first above written.

JOHN HOFFMAN. [SEAL.]

Signed, sealed and delivered in the presence of us,
JAMES MILLER,
JNO. E. JEFFORDS.

STATE OF OHIO, *Ross County*, *ss:*

Before me, the subscriber, a justice of the peace in and for said county, this day personally appeared the above named John Hoffman, who did acknowledge the above signing and sealing of the above deed to be his act and deed, for the special purposes expressed in the same. Witness my hand and seal, this 1st day of December, A. D. 1827.

JAMES MILLER, *J. P.* [SEAL.]

Recorded in the recorder's office of Madison county, in book No. 6, page 229.

And thereupon this cause was continued.

And afterwards, to wit, on the 12th day of July, being in the July term of said court, anno Domini one thousand eight hundred and thirty-three, the following proceedings were had in this cause, to wit: "This day came the complainants, by their solicitor, and on motion of the complainant the bill in this cause is dismissed as to the defendants, Matthew Rea, Abraham Hoffman, Thomas Taylor, Eli W. Gwynne, James Barrett, Matthew Bonner, Joseph Hoffman, and Aquilla Toland, without prejudice; and the court do thereupon adjudge and decree that the said complainants pay to the said defendants, Matthew Rea, Eli W. Gwynne, Matthew Bonner, and Aquilla Toland, their full costs, within sixty days, and upon default thereof, that execution issue as upon judgments at law; and it is ordered that the cause, as to the other defendants, be continued."

And afterwards, to wit, on the seventeenth day of December, being in the December term of said court, in the year last aforesaid, the following proceedings were had in this cause, to wit: "On motion of the complainants' counsel a rule is entered against the defendant, Brush, to answer or plead by the first day of April next; and this cause is continued."

And afterwards, to wit, on the twenty-ninth day of March, anno Domini eighteen hundred and thirty-four, came the defendant, Henry Brush, in person, and filed in the clerk's office of said court his answer to the complainants' said bill, which is in the words and figures following, to wit:

The separate answer of Henry Brush, one of the defendants, to the bill of complaint of John H. Ware, Edmund M. Ware, William W. Ware, and Susan M. Ware, widow, &c., and Mary W. Ware, and Roberta Anna Ware, infants, &c., complainants.

This defendant saving and reserving to himself, now and at all times hereafter, all and all manner of advantage and benefit of exception to the many uncertainties, insufficiencies, imperfections and untruths, in said complainants' said bill contained, for answer thereunto, or unto so much and such parts thereof as he, this defendant, is advised it is material and necessary for him to make answer unto, he answereth and saith, that he is altogether unacquainted with the said complainants and every of them, and has not any information or knowledge of their being heirs or legal representatives of John Hockaday, deceased, or of the said Hockaday, except as derived from said bill, or by the claim of title of this defendant to the land in controversy between him and said complainants, furnished by the patent or grant by the United States to this defendant, and therein stated, by which it appears that this defendant is "assignee of John Hoffman, who is assignee of Joseph Hoffman, Rachel Hoffman, Daniel Hoffman, Abraham Hoffman, Adam Hoffman, Catharine Hoffman and David Hoffman, who (together with the said John Hoffman) were the assignees of George Hoffman, who was assignee of Joseph Ladd, assignee of Robert S. Ware, executor of the said John Hockaday, deceased." The said land, in two surveys of two hundred and four hundred acres, was granted to this defendant by letters patent from the United States, bearing date twenty-third January, 1818, in which is the above description or derivation of title to this defendant, and is all he knows concerning the same, except the statements in said complainants' said bill; said grants or patents are herewith filed as a part of this answer; and this defendant prays they may be taken and considered as such, and this defendant states, that said grants or patents contain the first and only information or knowledge he possessed or even received (as far as he now recollects) as to the manner in which said title was or would be derived to him; he has no recollection that he ever saw either the warrant or warrants, entry or entries, survey or surveys on which said grants or patents emanated, or copies of either, and he firmly believes he never did; and declares that he is a bona fide innocent purchaser of said lands for full and valuable consideration, fully paid, before any knowledge of any adverse claim or claims to the same; and he denies, therefore, all notice at and before he completed payment for said land, which was before said grants or patents emanated, and he also denies all notice at and before the

same emanated of the claims of the complainants. He denies any knowledge of the fraud charged against decedent, Joseph Ladd, in said bill, nor does he believe the same to be true as therein stated; on the contrary, he has every reason to believe, and does believe, that the purchase by said Ladd of the executor of Hockaday, of his soldier's right to obtain warrants for said lands, was fair and bona fide for a valuable and good consideration paid to said executor, thereby increasing the assets of said estate; and this defendant has been informed, and does verily believe, that such sales by executors appointed in Virginia of such soldiers' rights, was so frequent and common as to become a common practice, and if not agreeable to the then existing laws of Virginia, this defendant insists it would be a common error, and make the law in such cases. This defendant had no knowledge, when he purchased and paid for said lands and received the grants or patents therefor, what the will of Hockaday contained, or how far forth, according to the then laws of Virginia, it authorized the said sale by said executor of said rights; nor doth he now know its contents, and cannot therefore admit or deny the same, but insists on proof by complainants. He, this defendant, has no knowledge how or in what manner said George Hoffman acquired rights to said warrants or lands, and cannot, therefore, admit or deny the same, but insists on proof by complainants; and having no knowledge of the heirship of complainants or their relationship to decedent Hockaday, he cannot admit or deny the same, but insists on the proof. This defendant has been in possession of said lands by himself and tenants, under claim of title by purchase, since 1808, and has made lasting and valuable improvements thereon, and insists that the claim of complainants ought to be considered barred by the statute of limitations, this defendant having continued such peaceable possession, with claim of title, more than twenty years; and he insists that at any rate he ought to be compensated for all his betterments and improvements made thereon; and this defendant denies all fraud and unlawful combination wherewith he stands charged in and by said bill, or that any other matter or thing not herein well and sufficiently answered unto, (material for him to make answer unto) confessed or avoided, traversed or denied, is true, all which he will aver and prove as this honorable court shall award or direct; and humbly prays to be hence dismissed with his reasonable costs and charges most wrongfully sustained.

H. BRUSH.

Ross County, *ss.*

Henry Brush made oath before the subscriber, a justice of the peace, that the matters and things in the above and foregoing, his answer, so far as related of his own knowledge, are true, and so far as from the information of others he believes the same to be true.

H. BRUSH.

Sworn to, and subscribed before me, this 24th day of March, 1834.

JAMES MILLER, *J. P.*

Filed with said answer are certain exhibits in the words and figures following, to wit:

James Monroe, President of the United States of America—to all to whom these presents shall come, greeting:

Know ye, that in consideration of military service performed by John Hockaday (a captain for three years) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line, on continental establishment, to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Sciota," and other acts of the said Congress, amendatory of the said act, there is granted by the United States, unto Henry Brush, assignee of John Hoffman, who was assignee of Joseph Hoffman, Rachel Hoffman, Daniel Hoffman, Abraham Hoffman, Adam Hoffman, Catharine Hoffman, and David Hoffman, who (together with the said John Hoffman) were the assignees of George Hoffman, who was assignee of Joseph Ladd, assignee of Robert S. Ware, executor of the said John Hockaday, deceased, a certain tract of land containing two hundred acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, by survey bearing date the twenty-eighth day of May, in the year one thousand eight hundred and ten, and bounded and described as follows, to wit:

Survey of two hundred acres of land in favor of the said George Hoffman, on part of a military warrant, No. 5,520, (the whole thereof being for one thousand acres,) on the waters of Deer creek: beginning at a stake in a prairie, southeast corner to John Shearer's entry, No. 5,529, running with his line, north four degrees, west one hundred and sixty poles, to three hickories in the line of the representatives of Peter Helphinstine's survey, No. 4,515; thence, with said line, north eighty-six degrees, east two hundred poles to a stake in said line; thence south, one hundred and seventy-eight poles, to two black oaks in the line of said Hoffman's entry, No. 6,247; thence, with the line of said entry, west one hundred and eighty-six poles to the beginning, with the appurtenances: To have and to hold the said tract of land, with the appurtenances, unto the said Henry Brush and his heirs and assigns forever.

In witness whereof, the said James Monroe, President of the United States of America, hath caused the seal of the General Land Office to be hereunto affixed, and signed the [L. S.] same with his hand, at the city of Washington, the twenty-third day of January, in the year of our Lord 1818, and of the independence of the United States of America the forty-second.

By the President: JAMES MONROE.

JOSIAH MEIGS,
*Commissioner of the General Land Office.*

I certify that John Hockaday was originally entitled to the bounty land granted to Henry Brush by the within patent.

Given at the General Land Office, this 23d day of January, 1818.

JOSIAH MEIGS, *Commissioner.*

Recorded in the General Land Office, in vol. 8, page 229, of patents for lands granted to the Virginia line on continental establishment.

JOHN M. MOORE, *Clk.*

James Monroe, President of the United States of America—to all to whom these presents shall come, greeting:

Know ye, that, in consideration of military service performed by John Hockaday (a captain for three years) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and other acts of the said Congress, amendatory of the said act, there is granted by the United States unto Henry Brush, assignee of John Hoffman, who was assignee of Joseph Hoffman, Rachel Hoffman, Daniel Hoffman, Abraham Hoffman, Adam Hoffman, Catharine Hoffman, and David Hoffman, who (together with the said John Hoffman) were the assignees of George Hoffman, who was assignee of Joseph Ladd, assignee of Robert S. Ware, executor of the said John Hockaday, deceased, a certain tract of land containing four hundred acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, by survey bearing date the twenty-eighth day of May, in the year one thousand eight hundred and ten, and bounded and described as follows, to wit:

Survey of four hundred acres of land in favor of the said George Hoffman, on part of a military warrant, No. 5,520, (the whole thereof being for one thousand acres,) on the waters of Oak run, a branch of Deer creek: beginning at a stake in a prairie, southwest corner to John Shearer's entry, No. 5,529, running south 150 poles to a burr oak and hickory; thence east 235 poles to two black oaks and a hickory; thence south 10 poles to a stake, northwest corner to the representatives of Peter Helphenstine, survey No. 4,513, a hickory and white oak, marked as bearing trees; thence with said line N. 80° 30′ E., 205 poles to two elms, a white oak, and hickory; thence north 132 poles to a stake in a prairie near Levi Post's house; thence, west 437 poles to the beginning, with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said Henry Brush and his heirs and assigns forever.

In witness whereof, the said James Monroe, President of the United States of America, hath caused the seal of the General Land Office to be hereunto affixed, and signed the same [SEAL.] with his hands, at the city of Washington, the twenty-third day of January, in the year of our Lord 1818, and of the Independence of the United States of America the forty-second.

JAMES MONROE.

By the President:
JOSIAH MEIGS,
*Commissioner of the General Land Office.*

I certify that John Hockaday was originally entitled to the bounty land granted by the within patent to Henry Brush, who claims under the said Hockaday.

Given at the General Land Office the 23d day of January, 1818.

JOSIAH MEIGS, *Commissioner.*

Recorded in the General Land Office in vol. 8, page 228, of patents for lands granted to the Virginia line on continental establishment.

JOHN M. MOORE, *Cl'k.*

And afterwards, to wit, on the ninth day of May, anno Domini eighteen hundred and thirty-four, came the complainants by Mr. Goodenow, their solicitor, and filed their replication to the answer of said defendant, Brush, as follows, to wit:

HEIRS of WARE *vs.* HENRY BRUSH. } U. S. Circuit Court, Ohio.

*Replication.*

These repliants, saving unto themselves all advantage of exception, &c., say that they will aver and prove their bill to be true, certain and sufficient in the law; and that the said answer of the said defendant Brush is untrue, uncertain and insufficient: all which these repliants will aver and prove as this honorable court shall direct, and pray as they have already prayed.

JNO. M. GOODENOW,
*Solicitor for complainants.*

And afterwards, to wit, at the July term of said court, in the year last aforesaid, this cause was continued; and afterwards, to wit, at the December term of said court, in the year last aforesaid, this cause was continued by consent; and afterwards, to wit, at the July term of said court, anno Domini eighteen hundred and thirty-five, "by consent of parties this cause was continued;" and afterwards,

to wit, at the December term of said court, in the year last aforesaid, the following deposition was filed, and opened in open court to be used as evidence on behalf of said complainants, to wit:

The deposition of Ann Christian, taken this 27th day of July, in the year of our Lord one thousand eight hundred and thirty-five, before me, a justice of the peace for the county of Charles City, in the State of Virginia, at the house of Eaton Christian, in the said county, being more than one hundred miles from the place where the circuit court of the United States for the 7th circuit and district of Ohio is held, to be read as evidence in a suit now depending in the said court, in which the heirs of Ro. S. Ware are plaintiffs, and Henry Brush is defendant. The deponent being first duly sworn upon the Holy Evangelist of Almighty God, deposeth and saith, that she was well acquainted with the late John Hockaday; that at the time of his death he left but one child, who was his only heir, to wit, Hannah C. Hockaday; that the said Hannah C. intermarried with a certain Ro. S. Ware; that the said Hannah and Robert are both dead, and left the following children, to wit, John H. Ware, Edmund M. Ware, William W. Ware, and Robert S. Ware, all of which said children are still alive, except the latter Ro. S.; that the said Ro. S. intermarried and died, leaving a widow, to wit, Susan W., and two children, to wit, Mary M. Ware and Roberta Anna, the latter of which, to wit, Roberta Anna, died two or three years ago, being about four or five years of age at the time of her death. This deponent further states, that the Ro. S. Ware named as executor in the will of the said John Hockaday, a copy of which will is hereto attached, is the same Ro. S. Ware who married the said Hannah, the daughter of the said John Hockaday. The deponent further states, that she is now 57 years of age; and further this deponent saith not.

her
ANN ⋈ CHRISTIAN.
mark.

STATE OF VIRGINIA, *Charles City County, to wit:*

I, James H. Christian, a justice of the peace for the said county of Charles City, do hereby certify that the foregoing deposition of Ann Christian, taken to be read as evidence in a cause now depending in the circuit court of the United States for the 7th circuit and district of Ohio, in which the heirs of Ware are plaintiffs, and Henry Brush is defendant, was taken and subscribed before me, a justice of the peace for the said county, on this 27th day of July, 1835; that the said deposition was reduced to writing in my presence, by a disinterested person; and that the deponent was duly cautioned, examined, and sworn to testify and say the truth, the whole truth, and nothing but the truth; all which I do hereby certify.

Given under my hand and seal, this 27th day of July, 1835.

JAMES H. CHRISTIAN. [SEAL.]

In the name of God, amen. I, John Hockaday, of New Kent county, being of perfect mind and memory, and calling to mind and duly considering the uncertainty of human life, do make and constitute this my last will and testament, in form and manner following: First, and principally, I commit my soul into the hands of my blessed Maker, trusting in the merits of Christ, my Saviour, for the remission of all my sins; my body I desire to be decently interred, at the discretion of my executors, hereinafter named. As to my temporal estate, I give and bequeath of it in manner and form following: My personal estate, the whole and every part thereof, it is my will and desire should be kept together and improved to the best advantage, till all my guardian accounts are closed finally—the profits of which personal estate I give and bequeath to my beloved wife, Elizabeth, to be by her received annually, that is to say, and I would be understood to mean, the thirds thereof. I give and bequeath unto William Hockaday Floyd fifty pounds, for the purpose of giving him an education. And I do hereby nominate and appoint Robert S. Ware, William Parrish, and John Saunders, the executors of this my last will and testament. As witness my hand and seal, this 23d day of March, 1799.

JOHN HOCKADAY. [SEAL.]

Signed, sealed and confirmed in the presence of us,

EDWARD JONES,
GEORGE BAKER,
WILLIAM ALLEN.

At a court held for New Kent county, the 11th of July, 1799, this last will and testament of John Hockaday, deceased, was put into court by Ro. S. Ware, one of the executors therein named, and sworn to by him, and being proven by the oaths of Edward Jones and Geo. Baker, two of the witnesses thereto subscribed, is ordered to be recorded; and on the motion of the said executor, certificate is granted him for obtaining probate thereof in due form, he having made oath and entered into bond with security, according to law. William Parrish, one of the executors named in the said will, appeared in court, and refused to qualify thereto.

Teste: W. B. CLAYTON, *Clerk.*

(A copy.) Teste: JNO. D. CHRISTIAN, *Clerk.*
July 24th, 1835.

STATE OF VIRGINIA, *Charles City County, to wit:*

I, Robert W. Christian, clerk of the county court of Charles City, in the State of Virginia, aforesaid, do hereby certify, that James H. Christian, whose name is subscribed to the certificate bearing date the 27th day of July, 1835, written after the deposition of Ann Christian, on the other part of this sheet, is now, and was at the time of signing the same, a justice of the peace in and for the county afore-

said, duly commissioned and qualified, according to the constitution and laws of the State of Virginia, and that said signature is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said county of Charles City, at the court [L. S.] house thereof, this twenty-fourth day of August, 1835, in the 60th year of the commonwealth.

RO. W. CHRISTIAN.

STATE OF VIRGINIA, *Charles City County, to wit:*

I, Hamlin Willcox, presiding justice of the county court of Charles City, in the State aforesaid, do hereby certify that Robert W. Christian, whose name is subscribed to the above certificate, is, and was at the time of signing the same, clerk of the county court aforesaid, and that said attestation is in due form.

Given under my hand and seal, this 25th day of August, 1835.

HAMLIN WILLCOX. [SEAL.]

And this cause was thereupon continued.

And afterwards, to wit, at the July term of said court, anno Domini eighteen hundred and thirty-six, the following depositions were filed and opened in open court, to be used as evidence on behalf of said defendants, to wit:

7TH CIRCUIT COURT UNITED STATES, *Ohio District.*

HENRY BRUSH *ads.* WARE and others, Heirs of Hockaday. } In Chancery.

The complainants will take notice that the defendant will take the depositions of Patrick McLane, Robert Hume, and Matthew Bonner, and others, on the 20th day of this present month of June, between the hours of eight o'clock in the forenoon, and six o'clock in the afternoon, and continue from day to day until completed, at the clerk's office of the clerk of the court of common pleas of the county of Madison, Ohio, in Loudon, in said county, before proper and competent authority, for that purpose; and the complainants, or their solicitor, may attend and cross-examine.

HENRY BRUSH, *Defendant.*

June 7th, 1836.

JOHN M. GOODENOW, Esq., *Solicitor for Compl'ts.*

Acknowledgment of service, to wit:

ST. CLAIRSVILLE, 10*th June*, 1836.

DEAR SIR: Your letter of the 7th inst., inclosing a notice to take depositions in Loudon, on the 20th inst., in the case of Ware's heirs

vs. yourself, was duly received this morning per mail. But I do intend to "acknowledge the fact, *be kase* you did'nt tell me for what object you were going to take the testimony of the witness named. However, it is a fact, I received the notice, and am

Yours, respectfully,

JNO. M. GOODENOW.

Hon. HENRY BRUSH.

The deposition of Robert Hume, Mathew Bonner and Patrick McLene, taken at the clerk's office of the clerk of the court of common pleas of Madison county, Ohio, in Loudon, in said county, on this 20th day of June, 1836, before me the undersigned, a justice of the peace of said county of Madison, in a certain case now pending and undetermined in the 7th circuit court of the United States of America, in and for the district of Ohio, at Columbus, in said State of Ohio, wherein Ware's heirs are complainants, and Henry Brush, defendant, pursuant to the enclosed notice and the acknowledgment thereof.

The said Robert Hume being first duly sworn, as the law directs, deposeth and saith: that Levi H. Post resided as tenant to said Brush in the year 1809, on lands claimed by said Brush, in Madison county, on surveys No. 6,247⅔ and 6,248, and that said Brush has had tenants from time to time nearly ever since, on said lands, and has still claimed the same as his; and for some eight or ten years past, has paid the tax thereon to him, this deponent, as treasurer of said county, and that said land is known by him as said Brush's farm, and that said Brush has caused to be made thereon considerable improvements. And this deponent saith, that he has reason to believe that said Brush has paid the taxes on said land ever since the year 1809; and further saith not.

ROBERT HUME.

Patrick McLene, also being duly sworn, deposeth, that the statement above made by Robert Hume, I corroborate fully to the best of my knowledge and belief.

Question by Defendant. Were you a surveyor and resident in said county of Madison as early as 1808, and had you some knowledge of the price of Virginia military land warrants at that time? If yea, state the general or customary price in 1808 and 1809.

Answer. I was employed in surveying about that time, and resided in what is the now said county of Madison; had some knowledge of the price of V. M. land warrants, and think, as well as now recollected, that they sold from 25 to 40 dollars per hundred acres; and think the most common price was 33⅓ dollars per hundred acres.

Question by Defendant. Is it within your knowledge that warrants and patents for these Virginia military lands have frequently been granted to the assignees of executors and administrators of the rights?

Answer. I have had knowledge of some such grants or conveyances; and further this deponent saith not.

P. McLENE.

THE STATE OF OHIO, *County of Madison.*

I, P. McLene, a justice of the peace, in and for the said county, do hereby certify that Robert Hume, and Patrick McLean, was by me, sworn to testify the truth, the whole truth and nothing but the truth; and that the depositions by them subscribed was reduced to writing by me and taken at the time and place in the notice specified.

Given under my hand this 20th June, 1836.

P. McLENE, *J. P.*

J. F. $ 50.

Witness, 50, paid by Brush.

THE STATE OF OHIO, *Madison County, ss.*

I, John Moore, clerk of the court of common pleas of the county aforesaid, do hereby certify, that Patrick McLene, before whom the foregoing depositions appear to have been taken, was at that time and now is an acting justice of the peace within and for the said county of Madison, duly commissioned and qualified; that full faith and credit are due to all his official acts as such in all courts of judication and elsewhere.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court at Loudon, this 20th day of June, A. D. 1836.

JOHN MOORE, *Clerk.*

And thereupon this cause was continued.

And afterwards, to wit, on the twentieth day of December, being in the December term of said court in the year last aforesaid, the following depositions were filed and opened in open court, to be used as evidence on behalf of said complainants, to wit:

The deposition of Mary Digges, of lawful age, taken at her house, New Kent county, in the State of Virginia, this 12th day of August, 1836, to be read as evidence in a suit pending in the chancery court of the United States, for the 7th circuit and district of Ohio, between the heirs of Ware vs. Henry Brush.

This deponent first being duly sworn upon the Holy Evangelist of Almighty God, deposeth and saith: that on the 18th day of January 1808, she moved to the county of New Kent with her husband Isaac Digges, and resided with Ro. S. Ware, who was half brother to my husband Isaac Digges, some time during the same year 1808. Joseph Ladd, of Charles City county, Virginia, came over and staid with Mr. Ware several days, during which time the said Joseph Ladd bought a parcel of land lying in the western country, of Ro. S. Ware, which land belonged to his wife's father, for which the said Ladd paid a pair of boots and about forty dollars; whether the money was paid at the time or not, I do not recollect, but recollect well the boots.

This deponent further sayeth that the wife of Ro. S. Ware, who was Hannah C. Ware, formerly Hannah C. Hockaday, the daughter of Capt. Jno. Hockaday, had been dead some two or three years previous to her removal to the said county.

MARY DIGGES.

I, Wm. Ratcliffe, a justice of the peace for the county of New Kent, in the State of Virginia, do hereby certify that the house of Mary Digges is upwards of one hundred miles from Columbus, Ohio, and that I wrote the within deposition in her presence at her house the 12th day of August, 1836. She being duly sworn to state the truth, whole truth, and nothing but the truth, in a cause depending and undetermined, Ware's heirs vs. Henry Brush, in Chancery, in the circuit court of the United States for the 7th circuit and district of Ohio, and that she signed her name in my presence.

Given under my hand and seal this 12th day of August, 1836.

WM. RATCLIFFE. [L. S.]

VIRGINIA, *New Kent County, to wit:*

I, John D. Christian, clerk of the court of the county aforesaid in the State of Virginia, do hereby certify that William Ratcliffe, whose name is affixed to the foregoing certificate, is a justice of the peace for the said county of New Kent, duly commissioned and qualified to the said office, according to the constitution and laws of the said State.

Given under my hand this 12th day of August, 1836.

J. D. CHRISTIAN.

The deposition of Chesley Jones, in the fifty-eighth year of his age, taken at New Kent court-house in the State of Virginia, this 11th day of August, 1836, to be read as evidence in a suit pending in chancery, in the circuit court of the United States for the 7th circuit and district of Ohio, between the heirs of Ware vs. Henry Brush:

This deponent, first being duly sworn upon the Holy Evangelist of Almighty God, deposeth and sayeth, That he was well acquainted with Robert S. Ware and his wife, who was the daughter and only lawful heir of Col. John Hockaday; her name was Hannah C. Hockaday, before her intermarriage with Robert S. Ware; she left four sons, namely, John H. Ware, R. S. Ware, Edmond M. Ware, and William W. Ware, and that they were all born and raised in the said county and State, and all, with the exception of R. S. Ware, who is dead, now reside in the State of Virginia, and upwards of one hundred miles from Columbus, Ohio, and that the said R. S. Ware survived his wife, Hannah C. Ware, some two or three years; and further this deponent sayeth not.

CHESLEY JONES.

I, William Ratcliffe, a justice of the peace for the county of New Kent, in the State of Virginia, do hereby certify that New Kent court-house is upwards of one hundred miles from Columbus, Ohio, and that I wrote the within deposition of Chesley Jones in his presence, who was duly sworn to state the truth, the whole truth, and nothing but the truth, in a cause depending and undetermined in the chancery circuit court of the United States for the 7th circuit and district of Ohio, between the heirs of Ware vs. Henry Brush, and that the said Chesley Jones subscribed his name to said deposition in my presence.

Given under my hand and seal this 11th day of August, 1836.

W. RATCLIFFE. [L. S.]

VIRGINIA, *New Kent County, to wit:*

I, John D. Christian, clerk of the court of the county aforesaid, in the of Virginia, do hereby certify that William Ratcliffe, whose name is affixed to the foregoing certificate, is a justice of the peace for the said county of New Kent, duly commissioned and qualified to the said office, according to the constitution and the laws of this state.

Given under my hand and seal of office, this 11th day of August, 1836.

J. D. CHRISTIAN. [L. S.]

The deposition of James Williams, in the seventy-third year of his age, taken at his house, New Kent county, State of Virginia, this 27th day of Sept. 1836, to be read as evidence in a suit pending in chancery in the circuit court of the United States for the 7th circuit and district of Ohio, between the heirs of Ware vs. Henry Brush:

This deponent, first being duly sworn upon the Holy Evangelist of Almighty God, deposeth and sayeth, that he was well acquainted with Col. John Hockaday of this county; that he had an only daughter, Hannah C. Hockaday, who intermarried with R. S. Ware; said Ware, after his intermarriage, lived and died in said county of New Kent; his wife died some two or three years previous to his death, and left four sons, as well as I recollect, and believe that Col. John Hockaday, R. S. Ware, and his wife and the heirs of R. S. Ware, were and still the survivors, are residents and citizens of the State of Virginia; and further this deponent sayeth not.

JAMES WILLIAMS.

I, William Ratcliffe, a justice of the peace for the county of New Kent, in the State of Virginia, do hereby certify that the house of James Williams is upwards of one hundred miles from Columbus, Ohio, and that I wrote his deposition in his presence, who was duly sworn to state the truth, whole truth, and nothing but the truth, in a cause depending and undetermined, in the chancery court of the

United States for the 7th circuit and district of Ohio, between the heirs of Ware vs. Henry Brush, and that the said James Williams subscribed his name in my presence to the within deposition.

Given under my hand and seal this 27th day of Sept. 1836.

W. RATCLIFFE. [SEAL.]

VIRGINIA, *New Kent County, to wit:*

I, John D. Christian, clerk of the court of the county aforesaid, in the State of Virginia, do hereby certify that William Ratcliffe, whose name is affixed to the foregoing certificate, is a justice of the peace for the said county of New Kent, duly commissioned and qualified to the said office, according to the Constitution and the laws of this State.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said county, at the court-house, this 28th day of September, 1836. [SEAL.]

J. D. CHRISTIAN.

The deposition of Elizabeth Bradenham, in the seventy-fifth year of age, taken at her house in New Kent county, State of Virginia this 27th day of Sept., 1836, to be read as evidence in a suit pending in chancery in the circuit court of the United States for the 7th circuit and district of Ohio, between the heirs of Ware vs. Henry Brush:

This deponent, first being duly sworn upon the Holy Evangelist of Almighty God, deposeth and sayeth, that she was well acquainted with Ro. S. Ware, who intermarried with Hannah C. Hockaday, the only daughter of Col. Jno. Hockaday; by Ware she left four sons, namely, Jno. H. Ware, Ro. S. Ware, Edmond M. Ware, and William W. Ware; all are yet living except Ro. S. Ware. Hannah C. Ware died some two or three years previous to her husband, Ro. S. Ware. They were all residents of the State of Virginia, and the survivors still reside in this State, and never, to my knowledge, resided in Ohio; and further this deponent sayeth not.

ELIZABETH BRADENHAM.

I, Wm. Ratcliffe, a justice of the peace, for the county of New Kent, in the State of Virginia, do hereby certify, that the house of Elizabeth Bradenham is upwards of one hundred miles from Columbus, Ohio, and that I wrote the within deposition in her presence, who was duly sworn to state the truth, whole truth, and nothing but the truth, in a cause depending and undetermined in the chancery court of the United States, for the 7th circuit and district of Ohio, between the heirs of Ware vs. Henry Brush, and that I subscribed her name in her presence to the said deposition.

Given under my hand and seal, this 27th day of September, 1836.

W. RATCLIFFE. [SEAL.]

VIRGINIA, *New Kent County, to wit:*

I, John D. Christian, clerk of the court of the county aforesaid, in the State of Virginia, do hereby certify, that William Ratcliffe, whose name is affixed to the foregoing certificate, is a justice of the peace, for the said county of New Kent, duly commissioned and qualified to the said office, according to the constitution and the laws of this State.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the county at the court house, this 28th day of September, 1836.

[L. S.]

J. D. CHRISTIAN.

VIRGINIA, *New Kent County, to wit:*

I, John D. Christian, clerk of the court of the county aforesaid, in the State of Virginia, do hereby certify, that it does not appear from the records of the office of the said court, that Robert S. Ware ever returned any account of his administration of the estate of John Hockaday, dec'd, formerly of this county.

Given under my hand, this 12th day of August, 1836.

J. D. CHRISTIAN.

And afterwards, to wit, on the twenty-sixth day of December, in the term last aforesaid, came the defendant by W. Creighton and G. Swan, Esquires, his solicitors, and filed the following exceptions to the depositions of said complainants, to wit:

7TH CIRCUIT COURT UNITED STATES,
*District of Ohio, December Term*, 1836.

JOHN H. WARE et al.
*vs.*
HENRY BRUSH.
} In Chancery.

The defendant will except to the depositions of the complainant, for the following reasons:

1. It no where appears, that the deponents were carefully examined and cautioned.
2. It does not appear, that the deponents subscribed their names to the testimony after the same was reduced to writing.
3. As to the deposition of Mary Digges, it does not appear to what the deponent signed her name.
4. It does not appear, but that W. Ratcliffe was of counsel or attorney for one of the parties.
5. Other objections, &c.

W. CREIGHTON & G. SWAN, *for Def't.*

And afterwards, to wit, on the thirtieth day of December, in the term last aforesaid, the following proceedings were had, to wit: By consent of the parties, by their counsel, the exceptions to the deposi-

tions of the complainants are withdrawn, and with like consent this cause is continued.

And afterwards, to wit, on the nineteenth day of May, being in the May term of said court, Anno Domini, eighteen hundred and thirty-seven, came the said defendant Brush, and by leave of the court filed the following amendment to his answer heretofore filed in this cause, to wit:

7TH CIRCUIT COURT UNITED STATES,
*Ohio District.*

HENRY BRUSH
*ads.*
Heirs of WARE, Heirs of HOCKADAY. } In Chancery.

The defendant, by leave, amends his answer by insisting upon the following, viz: 1st. That he is entitled to compensation for the taxes he has paid and the proper allowance for a locator's share, and the labor, trouble and expense in making and perfecting the title, and to hold and retain all the surplus land in said surveys, over and above the quantity called for in the grants.

By consent this amendment is filed.

J. McLEAN.

The following documents were also exhibited as evidence on the hearing of this cause, to wit:

*June 8th*, 1809. *No.* 6,248, *withdrawn.*

George Hoffman, ass'ee, enters two hundred acres of land on part of a military warrant No. 5,520, on the waters of Deer creek, beginning at the southeast corner of John Shearer's entry No. 5,529, running with his line northwardly to the line of the representatives of Peter Helphenstine, dec'd; thence with their lines, to the line of Joseph Harness' entry No. 5,531; thence with his line and from the beginning east, for quantity.

*August* 18, 1810. *No.* 6,248.

George Hoffman, ass'ee, enters 200 acres of land on part of a military , No. 5,520, on the waters of Deer creek, beginning at the southeast corner of John Shearer's entry No. 5,529, running with his line, N. 4, W. 160 poles; thence N. 86. E, and from the beginning east, so far that a north and south line will include the quantity.

I, John A. Bryan, auditor of State, do hereby certify the above to be a correct copy of entry No. 6,248, 200 acres of land, as appears by the books in this office.

[L. S.] In testimony, whereof, I hereunto set my hand and affix the seal of this office, this 28th day of December, 1835.

JOHN A. BRYAN,
*Auditor of State.*

[*No.* 6248, 200 *acres.*]

Surveyed for George Hoffman, ass'ee, 200 acres of land, on part of a military warrant No. 5,520, on the waters of Deer creek, beginning at a stake in a prairie, southeast corner to John Shearer's entry No. 5,529, running with his line, N. 4, W. 160 poles to three hickories in the line of the representatives of Peter Helphinstine's survey No. 4,515; thence with said line, N. 86, E. 200 poles to a stake in said line; thence south, 178 poles to two black oaks in the line of said Hoffman's entry No. 6,247; thence with the line of said entry, west 186 poles to the beginning.

NATH'L MASSIE, *D. S.*

May 28th, 1810.

DAVID HOFFMAN, JOSEPH HOFFMAN. } C. C.

ELIAS LANGHAM, *M. K.*

September 10, 1810.

I, John A. Bryan, auditor of state, do hereby certify the above to be a correct copy of survey No. 6,248, 200 acres of land, as appears by the books in this office.

[SEAL.] In testimony whereof, I have hereunto set my hand, and affixed the seal of office, this 29th Dec. 1835.

JOHN A. BRYAN,
*Aud'r of State.*

*June* 8, 1809. *No.* 6,247. *Amended.*

George Hoffman, ass'ee enters 400 acres of land on part of a military warrant, No. 5,520, on the waters of Deer creek, beginning at the southwest corner of John Shearer's entry, No. 5,529, running south to the line of Peter Muhlenburg's survey; thence with his line, and the line of the representatives of Peter Helphinstine, deceased, east, and from the beginning with Shearer's line eastwardly, so far that a north and south line will include the quantity.

*August* 18, 1810. *No.* 6,247.

George Hoffman, ass'ee, amends his entry, No. 6,247, by striking out all that appertains to Peter Muhlenberg's survey, and insert, in lieu thereof, from the beginning, and after the words south 150 poles; thence east 235 poles, south ten poles to the north-west corner of a survey made for the representatives of Peter Helphinstine, deceased, No. 4,513; thence with Helphinstine's line, and from the beginning with Shearer's line east, for quantity.

I, John A. Bryan, auditor of state, do hereby certify the above to be a correct copy of entry No. 6,247, for 400 acres of land, as appears by the books in this office.

[SEAL.] In testimony whereof, I hereunto set my hand, and affix the seal of this office, this 28th day of December, 1835.

JOHN A. BRYAN,
*Audr. of State.*

[*No.* 6,247, 400 *acres.*]

Surveyed for George Hoffman, ass'ee, 400 acres of land, on part of a military warrant, No. 5,520, on the waters of Oak run, a branch of Deer creek, beginning at a stake in a prairie, southwest corner to John Shearer's entry, No. 5,529, running south 150 poles to a bur oak and hickory; thence east 235 poles to two black oaks and a hickory; thence south 10 poles to a stake, northwest corner to the representatives of Peter Helphinstine's survey, No. 4,513, a hickory and white oak, marked as bearing trees; thence with said line, N. 80° 30″ E., 205 poles to two elms, a white oak and hickory; thence north 132 poles to a stake in a prairie, near Lovepott's house; thence west 437 poles to the beginning.

NATHL. MASSIE, *D. S.*

May 28, 1810.

ELIAS T. LANGHAM,
ANGUS L. LANGHAM. } C. C.
JOSEPH HOFFMAN, *M. K.*
Sept. 10, 1810.

I, John A. Bryan, auditor of state, do hereby certify the above to be a correct copy, survey No. 6,247, 400 acres of land, as appears by the books in this office.

[SEAL.] In testimony whereof, I have hereunto set my hand, and affixed the seal of office, this 29th day of Dec., 1835.

JOHN A. BRYAN,
*Audr. of State.*

And thereupon the following interlocatory decree was entered, to wit:

JOHN H. WARE, &c., Complts.
*vs.*
HENRY BRUSH, et al., Respdt's.

And now, to wit, at the May term of this court, A. D. 1837, this cause came on to be heard, on bill, answer, exhibits, replication and testimony; and the same being read and examined, and the argument of counsel being heard and understood, the court do find the material facts stated in the bill, except the allegation of fraud, to be true, and do consider the law and equity arising thereon are with the complainants; that the said Robert S. Ware, executor of said John Hockaday, deceased, had no legal right or authority, as such executor, to sell, convey, or assign, the interest or title of the legal representatives of the said Hockaday to the four thousand acres of land adjudged to them by the executive counsel of Virginia, for the revolutionary services of their ancestor, the said John Hockaday, as set forth in said bill, exhibits, and proofs; and that the sale and assign-

ment thereof by him to the said Joseph Ladd, and by the said Ladd to George Hoffman, and by the said George Hoffman to David Hoffman, Catharine Hoffman, Adam Hoffman, Abraham Hoffman, Daniel Hoffman, Rachel Hoffman, Joseph Hoffman, and John Hoffman, and by the said John Hoffman to the said Henry Brush, the defendant, as stated in the two several patents by him exhibited in his answer, were illegal and void, and that the said defendant, as such assignee, is chargeable in law with notice of the want of authority and defect of title in the said executor, and is therefore considered as holding the patents and legal title to the two several tracts of land in the county of Madison, the one containing four hundred acres, more or less, the other two hundred acres, more or less; which two tracts were located under and by virtue of the land warrant issued by the register of the land office of Virginia on the illegal assignment aforesaid, in trusts for the complainants, the legal representatives of the said John Hockaday; and the court further consider and adjudge that the complainants, John H. Ware, Edmund M. Ware, William W. Ware, Susannah M. Ware, and Mary M. Ware, (the said Roberta Anna Ware having deceased since the commencement of this suit,) are entitled, as the legal representatives of the said John Hockaday, to demand and receive of the said Henry Brush a release and conveyance of the legal title to the aforesaid two tracts of land in the said county of Madison; and that they are entitled also to an account of the rents and profits thereof while in the possession of the said Henry Brush. But, inasmuch as the court is advised, by the evidence before them, that the said Henry Brush has made lasting and valuable improvements upon the said tracts of land, for which the court are of opinion he is entitled to a reasonable compensation, and that he is also entitled to the repayment of the taxes by him paid thereon, with interest; and inasmuch as the court are not advised of the value of the rents and profits, nor of the value of the lasting and valuable improvements made thereon by the said Brush, the court do order and direct that this cause be referred to John Patterson, a special master commissioner appointed for that purpose, to take and state an account of the rents and profits of the said two several tracts of land, from the year 1808, to the 3d Monday of December next, and also an account of all lasting and valuable improvements at their present value, made thereon by the said Henry Brush, prior to the commencement of this suit, and also an account of the taxes paid on said tracts of land by the said Brush, with the interest thereon, and also an account of the expenses of the said Henry Brush in locating the said tracts of land; and that the said master commissioner, for the purpose of taking and stating such account, have power to issue subpœnas, and all other necessary process, for the attendance of witnesses, and that he proceed at such time and place as he may appoint, giving each party or their counsel ten day's previous notice by letter, through the post office or otherwise, as he may deem most advisable, to receive evidence and take testimony of such witnesses as he may please to call before him, or

as either party may require; which evidence and testimony, together with his opinion thereon, he is required to report to this court at the next term, and all other proceedings in the cause are stayed until the coming in of said report. By consent of parties it is further ordered that the surveyor of the county of Madison, at the instance of either party, proceed to make a survey and plat of each of the aforesaid tracts of land in said county, and return the same to the court at the next term, to which term this cause is continued.

Friday, May 19th.

And afterwards, to wit, on the twenty-second day of December, being in the term of December, in the year last aforesaid, came the said master commissioner, to whom this cause was referred, and filed in court here a report of his proceedings thereon, as follows, to wit:

CIRCUIT COURT OF THE UNITED STATES, *District of Ohio:*

JOHN H. WARE, et al., Complainants,
*vs.*
HENRY BRUSH, et al., Defendants.

And now, to wit, at the May Term of this Court, A. D. 1837, this cause came on to be heard on bill, answer, exhibits, replication, and testimony; and the same being read and examined, and the arguments of counsel being heard and understood, the court do find the material facts stated in the bill, except the allegation of fraud, to be true, and do consider the law and equity arising thereon are with the complainants: That the said Robert S. Ware, executor of said John Hockaday, had no legal right or authority as such executor to sell, convey, or assign the interest or title of the legal representatives of the said Hockaday to the thousand acres of land adjudged to them by the executive council of Virginia, for the revolutionary services of their ancestor, the said John Hockaday, as set forth in said bill, exhibits, and proofs; and that the sale and assignment thereof by him to the said Joseph Ladd, and by the said Ladd to George Hoffman, and by the said George Hoffman to Daniel Hoffman, Catharine Hoffman, Adam Hoffman, Abraham Hoffman, Daniel Hoffman, Rachel Hoffman, Joseph Hoffman, and John Hoffman, and by the said John Hoffman to the said Henry Brush, the defendant, as stated in the two several patents by him exhibited in his answer, were illegal and void, and that the said defendant, as such assignee, is chargeable in law with notice of the want of authority and defect of title in the said executor, and is therefore considered as holding the patents and legal title to the two several tracts of land in the county of Madison, the one containing five hundred acres, more or less, the other two hundred acres, more or less; which two several tracts were located under and by virtue of the land warrants issued by the Register of the Land Office of Virginia, on the illegal assignment aforesaid, in trust for the complainants, the legal representatives of

the said John Hockaday, to demand and receive of the said Henry Brush a release and conveyance of the legal title to the aforesaid two tracts of land in the said county of Madison, and that they are entitled also to an account of the rents and profits thereof while in the possession of the said Henry Brush. But inasmuch as the court is advised by the evidence before them, that the said Henry Brush has made lasting and valuable improvements upon the said tracts of land, for which the court are of opinion he is entitled to a reasonable compensation, and that he is also entitled to the repayment of the taxes by him paid thereon, with interest; and inasmuch as the court are not advised of the value of the rents and profits, nor of the value of the lasting and valuable improvements made thereon by the said Brush, the court do order and direct that this cause be referred to John Patterson, a special master commissioner appointed for that purpose, to take and state an account of the rents and profits of the said two several tracts of land, from the year one thousand eight hundred and eight, to the third Monday of December next; and also an account of all lasting and valuable improvements at their present value, made thereon by the said Henry Brush prior to the commencement of this suit; and also an account of the taxes paid on said tracts of land by the said Brush, with the interest thereon; and also an account of the expenses of the said Henry Brush in locating the said tracts of land. And that the said master commissioner, for the purpose of taking and stating such account, have power to issue subpœnas, and all other necessary process for the attendance of witnesses, and that he proceed at such time and place as he may appoint, giving each party or their counsel ten days' previous notice, by letter through the post office, or otherwise, as he may deem most advisable, to receive evidence and take testimony of such witnesses as he may please to call before him, or as either party may require; which evidence and testimony, together with his opinion thereon, he is required to report to this court at the next term, and all other proceedings in this cause are stayed until the coming in of said report. By consent of parties it is further ordered that the surveyor of the county of Madison, at the instance of either party, proceed to make a survey and plat of each of the aforesaid tracts of land in said county, and return the same to the court at the next term, to which term this cause is continued.

In obedience to the foregoing order, the undersigned, as special master commissioner, having given the notice required by the order, proceeded on the third day of August, 1837, to take testimony, &c. The complainants appeared by Mr. Kerr, their attorney, and the defendant, Judge Brush, in person. The depositions of Henry Warner and Vancisco Peck *was* taken on part of complainants, and of Robert Hume, David Kern, and Patrick McLean, on the part of defendants; which depositions are herewith exhibited, and form the basis of this report.

Rents and profits estimated as follows:

| | |
|---|---|
| Ten acres of plough land for thirteen years, being from 1812 to 1825, inclusive, (after making a reasonable allowance for necessary repairs) | $75 00 |
| Twenty acres of plough land for the next eleven years, (which includes the present year,) allowing for repairs as above | 165 00 |
| Peck's farm, (so called) from 1832 to 1837, inclusive, allowing for repairs as above | 100 00 |
| From twenty to twenty-five acres of meadow and pasture land, from 1812 to 1837, inclusive | 200 00 |
| Orchard for ten years | 300 00 |
| Making the whole amount of rents and profits | $840 00 |

Lasting and valuable improvements as follows:

| | |
|---|---|
| Twenty acres of land cleared at seven dollars per acre | $140 00 |
| Fencing, including making rails and putting them up | 100 00 |
| Orchard | 300 00 |
| Making the whole amount of lasting and valuable improvements | $540 00 |

From an abstract of the taxes paid on said lands, produced by the defendant from the auditor of States's office, the following estimate is made of the taxes and interest:

| | | | | |
|---|---|---|---|---|
| For the year | 1810 & 11, | taxes $12 36, | interest $19 61, | total $31 97 |
| " | 1812, | 6 00, | 9 00, | 15 00 |
| " | 1813, | 6 00, | 8 64, | 14 64 |
| " | 1814, | 9 00, | 12 42, | 21 42 |
| " | 1815, | 16 12, | 21 17, | 37 29 |
| " | 1816, | 13 50, | 17 01, | 30 51 |
| " | 1817 & 18, | 42 94, | 48 83, | 91 77 |
| " | 1820, | 10 50, | 10 71, | 21 21 |
| " | 1821, | 6 75, | 6 40, | 13 15 |
| " | 1822, | 9 00, | 8 10, | 17 10 |
| " | 1823, | 9 00, | 7 66, | 16 66 |
| " | 1824, | 7 50, | 5 85, | 13 35 |
| " | 1825, | 9 00, | 6 48, | 15 48 |
| " | 1826, | 7 56, | 4 95, | 12 51 |
| " | 1827, | 5 76, | 3 40, | 9 16 |
| " | 1828, | 6 66, | 3 51, | 10 17 |
| " | 1829, | 5 94, | 2 80, | 8 74 |
| " | 1830, | 5 22, | 2 17, | 7 39 |
| " | 1831, | 6 37, | 2 88, | 9 25 |
| " | 1832, | 5 73, | 1 70, | 7 43 |
| " | 1833, | 5 01, | 1 20, | 6 21 |

| | | | | |
|---|---|---|---|---|
| For the year 1834, | taxes, $3 22, | interest, 57, | total, | $3 79 |
| " 1735, | 7 77, | 92, | | 8 69 |
| " 1836, | 8 16, | 36, | | 6 52 |
| | $223 07, | $206 34, | | $429 41 |

Whole amount of taxes and interest, $429 41.

With regard to the expenses of locating said land, there is no evidence showing what has been paid. The general custom seems to have been for the locator to receive for his services a certain share of the land—not more than one-third, nor less than one-fifth. In this case I am of opinion that he is entitled to one-fourth; which would be one hundred and fifty acres.

For the better understanding of the testimony the master deems it proper to state, that, in August, 1831, the defendant sold three hundred acres of the land in controversy to one Vancisco Peck, who has made considerable improvements thereon. The value of these improvements not being included in the foregoing account, it is necessary that a reason should be assigned why testimony as to their value should have been taken.

It was alleged and insisted upon by the defendant, that the court did not intend to deprive him of compensation for improvements made since the commencement of the suit, and that the order in that particular was inadvertently made, and would be corrected by the court. To enable him to have the report amended, in case such mistake was made, it was thought advisable to take this testimony.

It will be noticed that the witnesses do not agree as to the value of the rents, nor as to the value of the improvements. The master was, therefore, compelled to exercise his discretion in deciding upon the weight of testimony. The witnesses being all unimpeached, their testimony was entitled to equal weight so far as their knowledge extended in relation to the facts about which they were called to testify. With regard to rents and profits, and lasting and valuable improvements, the master felt it to be his duty to rely more upon the testimony of Mr. Warner than upon any of the other witnesses, for the following reasons:

1st. Because he is the only witness whose testimony goes to the whole case.

2d. Because he is a surveyor, and knows the lines of the tract in controversy.

3d. Because, although first called before me as a witness by the plaintiff, he had previously, at the request of the defendant, went on to the premises with the master for the purpose of showing the lines of the different tracts. The defendant, at the same time, requested him to attend before the master for the purpose of being used by him as a witness. Mr. Warner was, therefore, regarded as equally the witness of both parties.

As to the compensation for locating the land, there is no material discrepancy in the testimony.

All which is respectfully submitted.

JOHN PATTERSON,
*Special Master Com'r.*

Master's fees $20.

The testimony referred to in the report of said master, and filed therewith, is as follows, to wit:

CIRCUIT COURT OF THE UNITED STATES, *District of Ohio.*

JOHN H. WARE and others, complainants,
*vs.*
HENRY BRUSH et al., defendants.

Personally before me, John Patterson, special master commissioner in this cause, came Henry Warner, a witness produced on the part of the complainants, and being duly sworn, deposeth and saith, in answer to the interrogations put to him, as follows, to wit:

1st interrogatory on part of complainant. What, in your opinion, is the value of the rents and profits of two several tracts of land in the county of Madison, now in the occupancy of Henry Brush, Esq., one four hundred acres being survey numbered 6,247; the other two hundred acres, survey numbered 6,248, from the year 1808 to the third Monday of December, 1837?

Answer. I first become acquainted with the land in 1812. There was then a small cabin and a few acres of land (not exceeding ten) cleared on both tracts. Since then there has been about as much more cleared, up to the year 1825. I think the cultivated land was worth ten dollars per year, which would be one hundred and thirty dollars. From that time to the third Monday of December next, I would estimate it at twenty dollars per year, two hundred and forty dollars. I do not mean that Col. Brush received that amount, but from the way land has usually rented, I think it was worth that. Further states that it was not occupied a part of the time—say from one to two years, or more. There is also from twenty to twenty-five acres of meadow and pasture land, the value of the rents and profits of which I think would be worth two hundred and fifty dollars from 1812 to 1837, inclusive, making altogether six hundred and forty. ($640.) Witness states that in the foregoing he has no reference to that part of the land now in possession of Mr. Peck. The rents and profits of that part he thinks would be worth one hundred and forty dollars. This added to the former sum, 640 dollars, makes in the whole seven hundred and eighty dollars. From the above estimate, the witness states, that there should be deducted the expense of keeping the farm in repair, which he thinks would be about one hundred and sixty dollars.

Question by defendant. Have you any knowledge of the rents actually received by defendant for any of the time you have estimated?

Answer. I do not know that he has ever received a cent.

Question 2d by defendant. Can you state the number of years the land in controversy has been actually occupied, since you became acquainted with it?

Answer. I cannot.

Question 3d by same. Do you know that, when it has been occupied, it has been by defendant, or his tenants, or by squatters, so called, who have gone on there without license?

Answer. The principal part were the tenants of Col. Brush, or reported so to be. I have no knowledge of any that were not.

Question 4th by same. How far from the land has said Brush lived during the time you have known it?

Answer. Fifty miles.

Question 5th by same. Please name the different occupants upon the land as you recollect them?

Answer. Levi H. Post, David Kerns, Edward Drummond, Presly Orr, William Garret, and William Balturn, are all I recollect, except Peck, Truant, and Stone, who now occupy the land bought of Col. Brush by said Peck.

Question 6th by same. State how many years each individual occupied, according to the best of your recollection and belief?

Answer. I do not know that any occupied the old improvement more than one year except Balturn, who occupied from two to three years.

Question 7th by same. Do you or not know that several, or more than one of them, went off secretly, and carrying the proceeds with them, leaving the deft. without any compensation for the use and occupation?

Answer. I do not know that any of them went of in that way.

Question 8th. Do you believe, according to the best of your knowledge, that the land in controversy has actually yielded to said Brush any thing like the amount above estimated by you as rents or profits?

Answer. I have no knowledge of his having received any thing. I do not believe he has received exceeding half the amount. This opinion is formed from my knowledge of the character of the tenants, and from general report.

Question by complainant. Do you state that neither of Colonel Brush's tenants (except Balturn) occupied the premises more than one year? or have you any knowledge how long any one of them did occupy?

Answer. I know that Orr was there not exceeding one year, and Drummond less than one year, and, as to the rest, I do not know how long.

Question by commissioner. Are you acquainted with the improvements made by Col. Brush on the above land up to the year 1831? and if so, what in your opinion is the present value of such improvements?

Answer. There is between one and two hundred apple trees, worth

at least five dollars each. The land cleared, say twenty acres, is worth five dollars per acre; the fencing is worth, in my opinion, one hundred dollars. I do not think the buildings worth any thing.

Question by complainants. Suppose a tenant had taken possession of either of the above tracts of land in the year 1808, and held the same undisturbed to this time, would not the rents and profits and use of the land more than pay him for lasting and valuable improvements now on the land?

Answer. I should say not.

Question by same. Has it not been customary for tenants to go into wild lands in this section of the State and make improvements of clearing, fencing, planting an orchard, building cabin or house, stable, &c., for a given number of years? and how many?

Answer. Seven years is the customary term. It varies, however, according to the amount of improvements to be made.

Question by the same. Would seven years be a usual and fair term for making such improvements as are made on what you term the Old farm, and planting such orchard?

Answer. Yes.

HENRY WARNER.

Sworn and subscribed before me the 3d of August, 1837.

JOHN PATTERSON,
*Special Master.*

Vancisco Peck, being produced by complainant, and being duly sworn, says, in answer to the interrogatories put to him, as follows, to wit:

1st. You have heard the first interrogatory put to Henry Warner. Please to answer it as if addressed to yourself?

Answer. I am not acquainted with the land sufficiently to make an estimate, except as to that part occupied by myself. I think the rents and profits of that during the time I have been on, which is about five years, would be worth three hundred dollars.

Question by defendant. The witness is desired to state the clear profit he has received by occupying the land, from the use of it, as he has used it, deducting the expenses of keeping it in repair?

Answer. It has not been a great deal of profit to me yet; about one hundred dollars.

Question 2nd by def't. What improvements or betterments have you made or caused to be made on the said land? Please state each separately.

Answer. One log house eighteen feet square and a half story high, shingle roof and brick chimney. A log barn, two pens and threshing floor between, 44 by eighteen feet, nine rounds high, about 12 or 13 feet high, or perhaps 15 feet, shingle roof. Three wells about fifteen feet deep, two walled with timber, one not. Three other houses or cabins about sixteen feet square, cabin chimneys. A good stable at one of the cabins; indifferent ones at the others. The whole

300 acres is under fence, and a number of cross farms, about fifty acres deadened, and the balance nearly all under brush.

Question by def't. What would you estimate the whole improvements at?

I think it would be worth at least nine hundred dollars.

Quest. by same. How much do you estimate the clearing and fencing to be worth?

Answer. I suppose it to be worth six hundred dollars.

Quest. by same. Is the fencing on the def'ts' land (next to yours,) worth as much and more than on yours?

Answer. Col. Brush's fence next to mine is better than mine, and worth more. I speak of two strings.

Question by same. Have you seen and are you acquainted with the orchard on def'ts' land spoken of by witness Warner, and what are the number of trees and the value?

Answer. I have seen the orchard; do not know the number of trees. I should suppose they would be worth five dollars a tree.

Question by same. How much can land be cleared at per acre, smack smooth, timbered as between your land and def'ts' southwesterly fence?

Answer. About six or seven dollars per acre. On further reflection thinks it would be worth ten.

Question by same. What is the value of six hundred acres of land, including your farm of three hundred, and the other three hundred adjoining, being the land in controversy, in cash, at this time?

Answer. I should say ten dollars per acre.

Question by def't. Can you state the time you purchased from defendant?

Answer. I purchased Sept. 22nd, 1831. Commenced improving in the spring following.

Question by complainant. I understand you to say that the rents of your farm in the year 1835 *was* worth $50; in 1836, $100; in 1837, $150, and that all the profit that it has been to you is about *one* $100. What is your meaning, and what repairs *does* so reduce your receipts?

Answer. I meant that I did not think that it really profited me more. If I had had stock to put on to it, it would have been more valuable. I did not use it as it might have been.

Question by the same. What number of years is it customary for tenants to enter into wild lands in this country, and clear, fence, and plant orchard and build houses, and what would be fair and customary time for you to hold your land to receive compensation for the improvements made by you on the same you now occupy, and which you purchased of Col. Brush?

Answer. I think the usual term for such improvement is from five to seven years. Witness states that he would rather not answer this question further.

Question by commissioner. In case Col. Brush should lose the land in controversy, to whom would you look for remuneration for your losses?

Answer. I would know of no other to look to but Col. Brush.

Question. You say in an answer to a question put by defendant, that two certain strings of fence on Col. Brushs' part of the land, next to yours, is worth more than your fence. Were these two strings of fence put up since 1831?

Answer. These two strings of fence referred to by me were erected since 1831.

Quest. by def't. Is there not another interior string of fence, still, together with cross fences, which have not been made since 1831; and is not that which has been made since 1831, all one string of fence, which you now refer to as having been made since 1831?

Answer. There is some fencing in there, but when it was made I cannot tell, or whether it is on the land or not; the two strings of fence which I referred to is all together, and may be called one string of fence. I did not mean any fence but the outside fence.

LANCISCO PECK.

Sworn and subscribed before me, the 4th of August, 1837.

JOHN PATTERSON.

Robert Hume being produced as a witness on the part of defendant, and being duly sworn, saith, in answer to the interrogatories put to him, as follows, to wit:

By defendant. Have you knowledge of the rents and profits of my farm lying near here, by being my agent to attend to it; and what has been the amount for any given number of years?

Answer. Mr. Brush made me his agent in 1820, and I continued agent to 1829, inclusive. During that time he had different tenants. I took the rent in grain. All that I ever recovered amounted to ten dollars and twenty-two and a half cents. There was one tenant, Charles Sowers, who was on the farm I think three years. He paid no rent except in repairs on the farm.

Question by same. Does the above include the rent for the whole farm as well as that where Doctor Steer lived, on the north of the Springfield road, as where Levi Post lived, on the south side?

Answer. It includes the whole.

Quest. by same. What will be the amount of the rent received for the land on the south side of the road for those nine years?

Answer. Four dollars and seventy-two and a half cents.

Question by same. On which side did Charles Soward live?

Answer. On the south side.

Question by same. Do you not know that the south side has been without any tenant a number of years, since your agency of the business ended in 1829 or 1830?

Answer. Yes it has; I think I may say three or four.

Question by comp't. Are you acquainted with the orchard on Mr. Brush's farm, of which you have been speaking? if so, how many trees are there in it, and what are their value?

358.

Answer. I have seen it and been in it; I think there are from fifty to one hundred trees. I would value them at six dollars per tree.

Question by def't. May there not be more than one hundred trees?

Answer. There might be a great many more.

Question by same. What is the cost per hundred for making and putting up rails into fence?

Answer. Prices differ from one dollar to one dollar and a half.

Question by commissioner. You have stated, that the whole rent received from 1820 to 1829, inclusive, was $10 22½, and that you recovered $4 72½ for that part lying on the south side of the road. Can you state how much rent was received for the land in controversy?

Answer. I cannot tell.

Question by def't. Is the reason why you cannot tell the amount received from the land in controversy, because you do not know where the line between the part in controversy, and that not in controversy, divides the improvement at the south side of the road?

Answer. That is the reason.

Question by complainant. Suppose a tenant had taken possession of either of the tracts of land in controversy, in the year 1808, and held the same undisturbed to the present time; would not the rent and profits, and use of the land, more than have paid him for all lasting and valuable improvements now on the same?

Answer. It must depend on circumstances. In my opinion, L. Peck has not been sufficient time on his part to pay for his improvement. As to the other part, I would say, that I would not make the improvements, for all that ever was raised upon it. Thereby, meaning that there has been very little raised upon it.

Question by same. What is land, of the quality of land in controversy, worth per year, when in the state of cultivation the farm of which you have been speaking is?

Answer. The land is poor, and I think the plough land not worth more than fifty cents an acre annually; the meadow, I am unacquainted with.

Question by def't. What is the value of the land in controversy per acre?

Answer. I think it would sell at from six to eight dollars per acre.

ROBERT HUME.

Sworn to and subscribed, this 4th August, 1837.

David Kern, being produced as a witness on the part of defendant, and being duly sworn, testifies as follows:

Question by def't. Have you lived on the land in controversy, as a tenant under def't., and how long; at what time, and how much ent did you pay?

Answer. I lived on the farm, fifteen years since, as a tenant; continued on it three years. I gave as rent for the farm twenty-five bushels of corn for the three years, besides making some improvements. I was poor at the time, and Col. Brush did not ask any more.

Question by same. Was the above for the whole farm, as well that in controversy, as that which is not in controversy?

Answer. It was.

Question by same. How many years since 1830 has the improvements on the south side of the Springfield road been without any tenant?

Answer. I think three or four years.

Question by same. What in your opinion is the value of the land in controversy per acre?

Answer. I think from six to eight dollars per acre.

Question by complainant. Would the use of the land in controversy, since the year 1808, be worth more than the lasting and valuable improvements now on the same?

Answer. I would not make the improvements for twice the amount that has ever been received. I have been knowing to the rents having been mostly laid out in improvements on the old part.

Question by the same. How many years would you require a lease to run, to compensate for the improvements made on said land?

Answer. (I would take a lease of twenty acres for seven years, and improve it for the use of it seven years; I mean good grain land.) I should say fifteen years to a man that wanted such land.

Question by def't. Do you know how any rent has been paid by other tenants than yourself; whether by improvements or by giving a part of the crop, or money?

Answer. I never knew of any rent being paid, except in work and some little grain. I do not, of my own knowledge, know that the work done by others was for rent.

Question by same. Is it your meaning, that you would not make the improvements on the old part, for twice the amount received as rent, for the same as known by you?

Answer. My meaning was to include all the farm, except the part occupied by Peck.

Question by same. Is or is not there as much fencing, and as good on that part of the land in controversy, not sold to Mr. Peck, as there is on the part sold to him?

Answer. I do not know what part of the land is controversy. There is considerable fence, but I cannot tell, without knowing where the line is, how much.

Question by complainant. Are you acquainted with the orchard on the land in controversy: if so, how many trees does it contain? what kind of fruit? when planted? and present value of same?

Answer. I am acquainted with the orchard. I planted it fifteen years ago last march. I planted one hundred trees. Some of it is good winter fruit. The man I got the fruit from said they were

grafted fruit, or some of them. I do not know that there was any of them grafted. I do not what to say of it; fruit is good to have. If the land was mine, I would not have them removed for two hundred dollars, and may be more.

Question by same. What was the price of the trees when you purchased them; and what the value of planting the same?

Answer. The price was six dollars per hundred. I never made any charge for setting them out. I had the use of the land, and the planting of the orchard went in with the other improvements.

Question by def't. Do you mean to say that you set out all that are there now, or that no apple trees have been put there since you planted the one hundred trees?

Answer. I have not known of any being set out since I planted. I do not know whether there has been any more or not.

DAVID KIERN.

Sworn to and subscribed before me, the 4th of Aug. 1837.

JOHN PATTERSON,
*Special Master.*

Henry Warner, being called again by defendant, further answers, as follows:

Question by def't. The witness is desired to state if there is as much fence and as good on the land in controversy, not sold to Mr. Peck, as on that sold to him?

Answer. I think there is as much, and that it is as good.

Question by commissioner. How much of the fence alluded to in the above answer was made since 1831?

Answer. I think there would be two-thirds.

Question by def't. What is the quantity of cleared land on def'ts farm, including that in controversy and that not in controversy, according to the best of your knowledge and belief?

Answer. About eighty acres cleared, and some partially cleared.

Question by commissioner. What would be the yearly value of the rents and profits of the orchard for the last ten years, independent of any other improvements?

Answer. If it had been kept in good order for the last eight years it would have been worth, in my opinion, seventy-five dollars a year. It has been of very little profit to the owner, kept as it has been. I think it has been worth no more to him than any body else.

Question by def't. Do you believe the orchard could have been rented to any body during the last 8 or 10 years for the sum of twenty-five dollars a year?

Answer. I think not.

Question by commissioner. Why could it not have rented for twenty-five dollars, if, as you say, it was worth seventy-five dollars?

Answer. In consequence of its being in bad repair.

Question by def't. How is the orchard in bad repair? Is it not, and has it not been, well fenced in all that time?

Answer. It has not been well fenced, nor well trimmed, and entirely choaked with briars.

Question by same. If well fenced, trimmed, and cleared of the briars, could it have been rented at twenty-five dollars a year?

Answer. I do not know that the orchard, separate from the other improvements, could have been rented for any thing.

Question. Why could it not be rented for any thing, in that situation?

Answer. Because any person living remote from the premises or orchard could not expect to receive any benefit therefrom.

HENRY WARNER.

Sworn to and subscribed, this 4th of August, 1837.

JOHN PATTERSON, *M.*

Patrick McLene, being produced as a witness by defendant, and being duly sworn, says, &c.

Question by def't. Witness is desired to state if he has had some knowledge of the customary compensation allowed in this State for locating Virginia military land warrants, and returning surveys of the same; and to state what is the most customary compensation or share of the land so located and surveyed allowed to the locator or surveyor?

Answer. So far as I know, the general custom was for the person locating to receive one-fourth or one-fifth of the land located; sometimes the one, and sometimes the other. This I know was the custom of Elias Langham, an old locator and surveyor. I am not acquainted with the price charged by any other locator.

Question by complainant. Who located the two surveys in controversy, to wit, Nos. 6,247 and 6,248; and was he to receive lands or money for his fees? And state, also, whether it was not customary to pay in money or other property for the locating, and the price in cash?

Answer. I have understood and believe that Col. Langham made the locations, but do not know the fact. I do not know whether the locator was to receive land or money for his fees. It was not customary for Langham to receive compensation in money for locating. His custom was to receive pay in land.

P. McLENE.

Sworn to and subscribed, this 4th August, 1837.

JOHN PATTERSON, *Master.*

Henry Warner, being again called by defendant, answers as follows:

Question by def't. Witness is requested to state if he has had some knowledge of the customary compensation allowed in this State for locating Virginia military land warrants, and returning surveys of

the same; and to state what is the most customary compensation or share of the land so located and surveyed allowed to the locator or surveyor?

Answer. I have a pretty good knowledge of the compensation allowed, by conversation with persons engaged in this way. The more general custom has been one-fourth or one-fifth. I have understood from Gen. McArthur that he has sometimes got one-half. I have understood from others that one-third has sometimes been given; but the general custom was as I have already stated.

HENRY WARNER.

Sworn to and subscribed, this 4th of August, 1837.

JOHN PATTERSON, *Special Master.*

Robert Hume, being again called, answered as follows:

Question by defendant. What will you say is the value of the orchard on the defendant's farm per year, and for what could it be rented at per year, kept in good repair?

Answer. I cannot say what it could be rented for to any other person than myself. But to myself it could not be rented for any sum whatever, inasmuch as I have no relish for apples; and if I had it would be of no service to me, unless I dwelt immediately by it. Then and in that case it might possibly suit me to make something out of it, by sale of the products to other persons.

ROBERT HUME.

Sworn to and subscribed before me, the 4th of August, 1837.

JOHN PATTERSON,
*Special Master.*

And afterwards, to wit, on the twenty-fifth day of December, in the term last aforesaid, a certain plat and survey was filed in court here, which is in the words and figures, and of the tenor following, to wit:

*No.* 6,248, 644 *acres.*—*No.* 6,247.

[*For plat, see original copy, page* 109.]

CIRCUIT COURT, U. S.,
*Ohio District.*

WARE and others,
*vs.*
HENRY BRUSH. } In Chancery.

Pursuant to the decree and order of said court at their last session, the undersigned surveyor of Madison county, at the instance and request of the defendant, and with the consent of the complainants given by their counsel, S. N. Kerr, Esqr., waiving notice, proceeded, on the 14th inst., to make a survey of the lands in controversy between the said parties, to wit: Surveys No. 6,247, 6,248. Beginning at a white oak, hickory, and elm, in the west line of survey, No. 4,513, running from thence with said line S. 80, W. 194 poles, to a stake, N. W. corner of said survey; thence north 10 poles to 2 black oaks; thence west 239 poles to a post-oak and hickory; thence north 152 poles to a stake; thence N. 84, E. 214 poles to a stake; thence S. 4°, E. 150 poles to 3 hickories in a line of survey, No. 4,515, and with the same N. 84°, E. 200 poles to a stake; thence south 190 poles to 2 black oaks; thence east 28 poles to a stake; thence south 132 poles to the beginning, and find the same to contain 644 acres.

All of which is respectfully submitted to the said court.

H. WARNER, *Surveyor, M. C.*

Dec'r 15, 1837.

RICHARD KERNS,
GEORGE GAUST, } C. C.

Surveyor's fees, $4 00.

Chain carriers, 1 50, $5 50, fees paid by defendant.

And the said complainants, by John C. Wright, Esquire, their solicitor, filed the following exceptions to the report of said master, to wit:

WARE et al.
*vs.*
BRUSH. } In Chancery.

The complainants except to the report of the master filed in this case, so far as the same may lead to allow the defendant 150 acres of land, or any thing else for locating said tracts of land. And, for cause of exception, insists that no allowance should be made for locating the land in dispute. Because—

1st. The warrant was for 4,000 acres, and there is no evidence the locator was not paid by other lands, or in money for his labor.

2. The defendant is not shown to have paid any thing, or to be liable for any thing for locating this land, or to have any thing to do with it.

3. If he had, it was a location in fraud of complainants' right, and this court will never allow pay for it.

J. C. WRIGHT,
*Atty. for Plff.*

And the said defendant Brush also excepted to the said report, and filed the following reasons, to wit:

OHIO DISTRICT,
*Circuit Court, U. S.*

H. BRUSH
*ads.*
WARE and others, heirs, &c.

Reasons for objecting to master's report filed yesterday:

1st. It does not appear to be according to the evidence taken by the master, especially so much of the evidence as goes to prove the amount of rents actually paid to, or received by said Brush, or which was agreed to be paid him. Moreover, the master in his report says: "He felt it his duty to rely more upon the testimony of Mr. Warner, (although all entitled to equal weight as being equally unimpeached and equally credible,) because and for these insufficient and illegal reasons stated in the report.

2d. The master has therefore allowed more for the rents and profits than the value, as proved, if that method of ascertainment could be allowed. The evidence taken together does not warrant the allowance as reported of any one item, and especially it does not the allowance of $300 for the use of the orchard.

3d. The betterments are worth vastly more than the amount allowed by the master, and such is the weight of evidence, even with respect to those improvements made prior to the commencement of the suit.

4th. The master has allowed nothing for improvements since the suit commenced, and although in this he has pursued the order of court, yet defendant supposes that limit in the decree to have happened by mistake; and that the court, as in another part of the decree appears, intended that deft. was entitled to, and should receive compensation for all improvements made on the land in controversy up to the rendition of the decree, and tho' rather as the court directs the estimate of rents and profits to be taken up to that time.

5th. As the master did not know that there was a surplus, which now appears by the survey since made, deft. will insist he is entitled the surplus land, and also his fourth of the balance according to report.

H. BRUSH.

Dec'r 23, 1837.

And afterwards, to wit, on the twenty-seventh day of December, in the term last aforesaid, the following proceedings were had, to wit:

JOHN H. WARE et al. pltffs.
*vs.*
HENRY BRUSH, deft. } In Chancery.

The court refer this cause again to the master, with instructions that he go upon the premises, and cause to be surveyed and set off one-fourth of the land in the above surveys as the locator's share, provided such division can be made without impairing the average value of the land; and the master in making the survey shall regard the average value of the land in an unimproved state, and so lay off the one-fourth as to include the improvements of the defendant, if it can be done so as to leave the residue of the tracts in an unimproved state, of equal value per acre to the tract thus set off; and if such division cannot be made, then that he shall make it, regarding the average quality of the land in an unimproved state, and lay down the improvements included. And if no division can be made on the above principles, then that the master shall ascertain and report what would be the value of one-fourth of the above tracts in an unimproved state, and also what it would be worth with the improvements as now made. And the master will make any other division under the direction of either party, and report his proceedings at the next term. The master will ascertain, by witnesses or otherwise, whether compensation has been made to the locator of the above tracts. And thereupon this cause was continued.

And afterwards, to wit: at the July term of said court, anno Domini eighteen hundred and thirty-eight, the following proceedings were had in this cause, to wit:

JOHN H. WARE, et al., Complainants,
*vs.*
HENRY BRUSH, Defendant. } In Chancery.

The parties appeared by their counsel, and it appearing that the special master Patterson, to whom certain matters in this cause stood referred at the last term, has not acted upon the subject of reference, and declines so to act, it is ordered, that the order of reference to said master be rescinded, and the case stand referred, under the same instructions, to Henry Warner, county surveyor of Madison county, who is hereby appointed master for that purpose, to report at the next term of this court, until which time this cause is continued. And afterwards, to wit, at the December term of said court, in the year last aforesaid, the following proceedings were had in this cause, to wit:

JOHN H. WARE, et al., Complainants,
*vs.*
HENRY BRUSH, et al., Respondents. } In Chancery.

The master commissioner appointed in this suit at the last term not having acted under said appointment, it is ordered that John L. Miner, a master of this court, be substituted for the master heretofore appointed, and that the cause stand referred to said Miner, under the same order heretofore entered, with power to take to his aid surveyor Warner, or any other surveyor, in the execution of said reference; and, for the coming in of the report and further proceedings, this cause is continued. And afterwards, to wit, on the twenty-seventh day of March, Anno Domini eighteen hundred and thirty-nine, a certified copy of the foregoing orders of reference issued to the said master commissioner, to wit:

THE UNITED STATES OF AMERICA, *District of Ohio, ss:*

To John L. Miner, Esq., Master Commissioner in Chancery of the Circuit Court of the United States, within and for the District of Ohio, greeting:

Whereas, at the May term of said court, Anno Domini 1837, among other were the following proceedings, to wit:

JOHN H. WARE, et al., Complainants,
*vs.*
HENRY BRUSH, et al., Defendants. } In Chancery.

And now, to wit, at the May term of this court, A. D. 1837, this cause came on to be heard, on bill, answer, exhibits, replication, and testimony, and the same being read and examined, and the argument of counsel being heard and understood, the court do find the material facts stated in the bill, except the allegation of fraud, to be true, and do consider the law and equity arising thereon are with the complainants; that the said Robert S. Ware, executor of said John Hockaday, deceased, had no legal right or authority, as such executor, to sell, convey, or assign, the interest or title of the legal representatives of the said Hockaday to the four thousand acres of land adjudged to them by the Executive Council of Virginia, for the revolutionary services of their ancestor, the said John Hockaday, as set forth in said bill, exhibits, and proofs; and that the sale and assignment thereof by him to the said Joseph Ladd, and by the said Ladd to George Hoffman, and by the said George Hoffman to David Hoffman, Catharine Hoffman, Adam Hoffman, Abraham Hoffman, Daniel Hoffman, Rachel Hoffman, Joseph Hoffman, and John Hoffman, and by the said John Hoffman to the said Henry Brush, the defendant, as stated in the two several patents by him exhibited in his answer, were illegal and void; and that the said defendant, as such assignee, is charge-

able in law with notice of the want of authority and defect of title in the said executor, and is therefore considered as holding the patents and legal title to the two several tracts of land in the county of Madison, the one containing four hundred acres, more or less, the other two hundred acres, more or less; which two several tracts were located under and by virtue of the land warrant issued by the register of the land office of Virginia on the illegal assignment aforesaid, in trust for the complainants, the legal representatives of the said John Hockaday; and the court further consider and adjudge that the complainants, John H. Ware, Edmund M. Ware, William W. Ware, Susan M. Ware, and Mary M. Ware, (the said Roberta Anna Ware having deceased since the commencement of this suit,) are entitled, as the legal representatives of the said John Hockaday, to demand and receive of the said Henry Brush a release and conveyance of the legal title to the aforesaid two tracts of land in the said county of Madison, and that they are entitled also to an account of the rents and profits thereof while in the possession of the said Henry Brush. But inasmuch as the court is advised by the evidence before them, that the said Henry Brush has made lasting and valuable improvements upon the said tracts of land, for which the court are of opinion he is entitled to a reasonable compensation, and that he is also entitled to the repayment of the taxes by him paid thereon, with interest; and inasmuch as the court are not advised of the value of the rents and profits, nor of the value of the lasting and valuable improvements made thereon by the said Brush, the court do order and direct that this cause be referred to John Patterson, special master commissioner, appointed for that purpose, to take and state an account of the rents and profits of the said two several tracts of land, from the year 1808 to the third Monday of December next; and also an account of all lasting and valuable improvements, at their present value, made thereon by the said Henry Brush prior to the commencement of this suit; and also an account of the taxes paid on said tracts of land by the said Brush, with the interest thereon; and also an account of the expenses of the said Henry Brush in locating the said tracts of land. And the said master commissioner, for the purpose of taking and stating such account, have power to issue subpœnas, and all necessary process for the attendance of witnesses, and that he proceed at such time and place as he may appoint, giving each party or their counsel ten days' previous notice, by letter through the post office, or otherwise, as he may deem most advisable, to receive evidence and take testimony of such witnesses as he may please to call before him, or as either party may require; which evidence and testimony, together with his opinion thereon, he is required to report to this court at the next term, and all other proceedings in this cause are stayed until the coming in of said report.

By consent of parties, it is further ordered that the surveyor of the county of Madison, at the instance of either party, proceed to make a survey and plat of each of the aforesaid tracts of land in said county, and return the same to the court at the next term; to which term this cause is continued.

And afterwards, to wit: at the December term of said court, A. D. 1837, the following proceedings were had in this cause, to wit:

The court refer this cause again to the master, with instructions that he go upon the premises and cause to be surveyed and set off one-fourth of the land in the above surveys as the locator's share, provided such division can be made without impairing the average value of the land in an unimproved state, and so lay off the one-fourth as to include the improvements of the defendant, if it can be done so as to have the residue of the tracts in an unimproved state of equal value per acre to the tract then set off; and if such division cannot be made, then that he shall make it regarding the average quality of the land in an unimproved state, and lay down the improvements included; and if no division can be made on the above principles, that then the master shall ascertain and report what would be the value of one-fourth of the above tract in an unimproved state; and also what it would be worth with the improvements as now made, and the master will make any other division under the direction of either party, and report his proceedings at the next term. The master will ascertain by witnesses, or otherwise, whether compensation has been made to the locator of the above tracts.

Tuesday, December 26th.

And afterwards, to wit: at July term, A. D. 1838, the following proceedings were had, to wit:

The parties appeared by their counsel, and it appearing that the special master, Patterson, to whom certain matters in this cause stood referred at the last term, has not acted upon the subject of reference, and declines so to act, it is ordered that the order of reference to said master be rescinded, and the case stand referred under *under* the same instructions to Henry Warner, county surveyor of Madison county, who is hereby appointed master for that purpose, to report at the next term of this court, until which time this cause is continued.

And afterwards, to wit: at the December term of said court, Anno Domini 1838, the following proceedings were had, to wit:

The master commissioner appointed in this suit at the last term, not having acted under said appointment, it is ordered that John L. Miner, a master of this court, be substituted for the master heretofore appointed, and that the cause stand referred to said Miner, under the same order heretofore entered, with power to take to his aid Surveyor Warner, or any other surveyor, in the execution of said reference; and for the coming in of the report and further proceedings this cause is continued.

In testimony whereof, I have hereunto set my name and affixed the seal of said court at the city of Columbus, the 27th day of March, A. D. 1839.

[SEAL.]

Attest: WM. MINER, *Clerk.*

And now, at this term, to wit: the term of July, Anno Domini eighteen hundred and thirty-nine, first herein aforesaid mentioned, came the said complainants by their counsel aforesaid, and also the defendant by his counsel, and the master commissioner to whom the aforegoing orders *was* in form aforesaid directed, returned the same into court herewith his report attached thereto as follows, to wit:

In obedience to the foregoing order, made in this cause at the December term of this court, 1837, and the last above order of reference, made at the December term of this court, 1838, the undersigned master commissioner, having given the requisite notice to both parties, neither of whom appeared, went upon the land described in the foregoing orders, on the 3d day of June, 1839, and procured to be set off to the said Brush, by Henry Warner, a competent surveyor, one hundred and sixty-one (161) acres of the said tracts of land, being one-fourth part of the whole, which tract of one hundred and sixty-one acres is bounded and described as follows: beginning at a white oak, hickory, and elm in the north line of survey No. 4,513, and southeast corner of said survey No. 6,247, running thence S. 80°, W. 172 poles to a stake, corner of L. Peck's farm; thence with a new county road north 132 poles to a stake; thence N. 80°, E. 144 poles to a stake, S. 67°, W. 1 pole from a double white oak; thence N. 73 poles to a stake; thence N. 80°, E. 46 poles to a stake; thence S. 71 poles to a stake; thence E. 28 poles to a stake, near the spring; thence S. 132 poles to the beginning. In the said 161 acres are included all the improvements made by the said Brush on the said two tracts of land, and it is considered of equal value per acre in a state of nature with the balance of the said two tracts, and that the average value of the land in an unimproved state is not impaired thereby. The undersigned has not as yet been able to procure any testimony as to whether compensation has been made to the locator of the said tracts of land.

All which is respectfully submitted.

J. L. MINER,
*Master Com. C. C. U. S. Dist. of Ohio.*

Platt of surveys numbered 6,248 and 6,247, and of the one hundred and sixty-one acres set off to Brush.

[*For plat, see original copy, page* 121.]

And thereupon the defendant filed the following exceptions to the report of the master, to wit:

7TH CIRCUIT COURT U. S. *Ohio District.*

H. BRUSH
*ads.*
WARE and others.

Defendant excepts to the master's report in this case, on the ground that the part laid off for defendant is not in the usual square form, and has not admitted him to the principal road leading through the land in controversy, to wit, the road leading from Loudon, in Madison county, to Springfield, in Clark county, commonly called the Springfield road, but cuts off the land laid off for the defendant from said road.

2d. Defendant thinks the part laid off for him ought to have extended across the entire tract, on the east end of said land in controversy, crossing said Springfield road.

Defendant therefore asks the court to direct the master to correct and alter his report in the above particulars.

Respectfully, &c.

H. BRUSH.

And thereupon the court entered the following decree, to wit:

JOHN H. WARE et al., Comp'ts.
*vs.*
HENRY BRUSH, Resp't.
In Chancery.

*Saturday, July 13th*, 1839.

This day came the parties, by their solicitors, and this case came on to be further heard upon the bill, answer, exhibits, evidence, reports of master, and exceptions, and having been argued by counsel, the court does thereupon order and decree that the respondent's exception to the report of Master Commissioner Miner be disallowed, and that the said report be confirmed; and so much of the several reports heretofore made, and not before confirmed or set aside, as do not conflict with this decree, are confirmed; and so much, if any, as does so conflict, are set aside, whether excepted to or not. And it appearing to the satisfaction of the court that the locator's part set off to the respondent by the master, Miner, as set forth and particularly described in his report, is full compensation for the location of said surveys, and has not been before satisfied, the same is confirmed to the said respondent. And it also appearing that the said land, so set off and confirmed to the said respondent, includes all the improvements made by the said respondent before the commencement of this suit, the use and occupation of which was the foundation of the report of the master for rents and profits, except the sum of one hundred dollars, reported as the rent of land in the possession of Peck since the suit has been pending, up to 1837, the court is of

opinion that the respondent is not entitled to compensation for this improvement, it having been made subsequent to the commencement of the suit; nor, under the circumstances, will the court allow rent, as the improvements have enhanced the value of the land more than the annual rents would amount to. It further appears to the satisfaction of the court, from the master's report, that the taxes upon said surveys paid by respondent amounted to the sum of $429 41, with interest up to and including the year 1836, to which add three years, at the rate of the last year's tax, computed $6 16, and the whole amount of taxes up to this time paid, or which should be paid, by respondent, is $447 89, the one-fourth of which the respondent is chargeable with, leaving to be accounted for by the complainants the sum of $335 02¾ of taxes, to be refunded by the complainants to respondents. And it further appears to the court that the assignment and transfer of the right to the land in controversy by the executor of Hockaday was fraudulent, and is illegal and void to transfer the complainants' interest in the land in equity; and that the same came to respondent, the patentee, with notice of the equity of the complainants; and that the residue of said surveys, deducting the part set off as above to the respondent for expense, &c. of locating the same, is held in trust for the complainants: it is thereupon ordered, adjudged and decreed that the said complainants shall, within ninety days, pay into the hands of the clerk of this court the sum of $335 02¾, and in default thereof that execution may issue therefor as at law. And it is further decreed, that the said Brush, within ninety days, execute and deliver into the hands of the clerk of this court, for the complainants, a good and sufficient deed of conveyance for the residue of said surveys, deducting the locator's part, assigned to him as aforesaid, with covenants of warranty against any claim by or through him, and deliver to the complainants, or their agent, peaceable possession thereof; in default of this conveyance, this decree may be held a conveyance, according to the law of Ohio in such cases provided, &c. And in default of the delivery of possession as aforesaid, then the complainants may have a writ of possession, directed to the marshal for execution, as at law. It is further ordered that respondent pay the costs of this suit, and that the clerk apply the money to be paid into his hands as the balance of the taxes, first, to the payment of the costs, and pay the balance, if any, to the defendant; and if insufficient to pay the costs, that he issue execution for the balance, &c. as aforesaid.

And thereupon, respondent, Brush, came and prayed an appeal, which is allowed, upon the filing bond in the penalty of five hundred dollars, according to law, within sixty days, with Eli W. Gwynne security, who is approved as such, the court being satisfied by evidence of his sufficiency, and that the value of said land in controversy exceeds two thousand dollars.

Saturday, July 13th.

And afterwards, to wit: on the twelfth day of September, Anno Domini, eighteen hundred and thirty-nine, the said defendant caused the following bond to be filed with the clerk of said court, to wit:

Know all men by these presents, that I, Eli W. Gwynne, am held and firmly bound unto John H. Ware, Edmund M. Ware, William W. Ware and Susan M. Ware, widow of Robert S. Ware, deceased, and Mary W. Ware and Roberta Anna Ware, infant children of the said Robert S. Ware, by Susan M. Ware, their mother, guardian and next friend, in the penal sum of five hundred dollars, to the payment of which, well and truly to be made, I do hereby bind myself, my heirs, executors and administrators; sealed with my seal, and dated the 12th day of September, Anno Domini, one thousand eight hundred and thirty-nine.

The condition of the above obligation is such, that whereas Henry Brush has taken an appeal from a certain decree rendered against him in favor of the said John H. Ware, Edmund M. Ware, William W. Ware and Susan M. Ware, widow of Robert S. Ware, deceased, and Mary W. Ware and Roberta Anna Ware, infant children of the said Robert S. Ware, by Susan M. Ware, their mother, guardian and next friend, in the circuit court of the United States, within and for the seventh circuit and district of Ohio, at the term of July, in the year one thousand eight hundred and thirty-nine, for certain property in said decree particularly described, reference being had to said decree, will more fully and at large appear, to the Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of January next. Now, if the said Henry Brush shall abide by, and do, and perform all that shall be required of him by the order and decree of said Supreme Court, and pay all costs that shall be decreed against him, then this obligation shall be void, otherwise in full force and virtue in law.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

E. W. GWYNNE. [SEAL.]

Witness:
WM. MINER.

THE UNITED STATES OF AMERICA,
*District of Ohio, ss.*

I, William Miner, clerk of the circuit court of the United States, within and for the seventh circuit and district of Ohio, do certify, that the foregoing is truly taken and copied from the records of the proceedings of the said court, in the case of John H. Ware et al., complainants, ag't Henry Brush, defendant.

In testimony whereof, I have hereunto set my name and affixed the seal of said court, at the city of Columbus, this 28th day of November, Anno Domini, 1839, and of the American Independence the 64th.

[SEAL.]

Attest: WM. MINER, *Clerk.*

The complainants represent themselves to be the only heirs and representatives of John Hockaday, deceased, who was an officer of the revolution, in the Virginia line on continental establishment. That he was entitled to four thousand acres of land in the Virginia military tract in Ohio, and that he died in 1799, before the warrants were obtained. That before his decease, he made a will, in which he disposed of his personal estate, and appointed Robert S. Ware, his son-in-law, William Parish and John Saunders, his executors; but Ware only proved the will and entered upon the duties of executor.

That the executor never executed the will or settled the estate. He had no right to interfere, as executor, with the real estate of the deceased, and the military right to the land above stated, in Virginia, was considered real estate.

The wife of Robert Ware died in 1805, leaving the complainants minors and heirs; and in 1808, Robert S. Ware died, leaving the complainants the exclusive interest, as heirs, in the land.

That the executor, through one Joseph Ladd, a stranger, and since deceased, without heirs and insolvent, surreptitiously procured a certificate to be issued by the Council of the Commonwealth of Virginia, certifying that the representatives of John Hockaday were entitled to the proportion of land, &c.; and with that certificate, the said Joseph Ladd afterwards, to wit, on the 6th August, 1808, by fraud procured of the executor an informal and illegal transfer or sale thereof to himself; by virtue of which, he procured from the register of the land office of Virginia, 4 warrants for the land aforesaid, to be issued to him as assignee of Robert S. Ware, executor of John Hockaday, deceased. That one of these warrants was located in Madison county; six hundred acres of which are in the possession of the defendant, who, as assignee of John Hoffman, who was assignee of Jos. Hoffman, Rachel Hoffman, &c., who were assignees of Joseph Ladd, obtained in 1818 a patent for the land in his own name. That the complainants were minors, and a knowledge of these facts was recently acquired by them.

In his answer, the defendant denies notice, asserts that Ladd received the assignment on a valuable consideration being paid, insists that the assignment by the executor was valid, and he relies upon lapse of time. He also insists, that under the circumstances, he is, at least, entitled to the locator's share, &c. That he entered upon the land, has made large and valuable improvements upon it, &c.

The first question for the consideration of the court in this case, is, whether the court can look behind the patent and to the assignment of the warrant, or rather the certificate on which the warrant was issued.

On the part of the defendant, it is earnestly contended, that the assignment of the certificate having been sanctioned by the register of the land office, in virginia, in issuing the warrant, and by the federal officers in issuing the patent, it is not now open for investigation.

That the rights of the parties must be determined by the patent, and not by acts anterior to it.

The Council of Virginia, in deciding the right of Hockaday, acted judicially; and it may be admitted that the grounds of their decision may not be afterwards examinable. But about this right there is no controversy between the present parties; they all claim under the military right of Hockaday.

Can the evidence on which the register acted be examined? This would be going not only behind the patent, but behind the warrant also. And why may not this be done? Miller, et al., vs. Kerr, et al., 7 Wheat., 1, 212.

The register in issuing the warrant acted ministerially; and so did the Commissioner of the General Land Office in issuing the patent. They could determine, no matter which settled the right between the present parties; their duties were ministerial, and not judicial.

This is not a controversy between a claimant under Hockaday, and a stranger to such claim. It might well be doubted, whether a person claiming adversely to Hockaday's assignees could go into the validity of the assignments, either before or after the issuing of the warrant; as between such parties the entry and patent might be conclusive. But this is a controversy between the heirs at law of Hockaday and his assignees. If the assignment was illegal or fraudulent, as asserted by the complainants, the right to the warrant and the land is in the heirs at law, and not in the assignee and patentee. The complainants are not only heirs, but they are minor heirs. At the time of the alleged assignment they had no knowledge of it, being all minors of tender years; some of them, indeed, were not then born. Could not this matter have been investigated shortly after the date of the warrant? The plea of the lapse of time will be hereafter considered, and the question will be now examined, as free from embarrassment on that ground.

Suppose a suit had been instituted by the minor heirs before the emanation of the patent. Could not the whole matter of the assignment have been investigated in chancery? This seems to be so clear, that it is not easy to imagine what substantial objection could have been interposed. Unless the action of the register was conclusive on the rights of the parties, there could have been no valid objection to such an investigation; and it would be against all authority and reason to hold that the acts of a ministerial officer can fix, absolutely, the rights of parties; he may, by his act, give greater dignity to a right, but he cannot essentially change the principle on which such right is founded.

This proposition would seem to be too plain for argument, and it will not be further discussed.

The question of the assignment, as between the heirs of Hockaday and his assignees, is open. The emanation of the patent can make no difference in this respect; and if we may investigate the assignment on which the register issued the warrant to Ladd, there can be little or no doubt of its illegality.

The right of Hockaday to military land, whether it was evidenced by a statutory provision and proof of service, or by a certificate of the council, or by a warrant from the register, pertained to the realty, and did not constitute a part of his personal property; and the will gave the executor no power over the real estate.

In Virginia the realty may become assets in the hands of the administrator or executor, where the personal property is insufficient to pay the debts of the deceased; but the land can only be made liable on showing to the probate court the debts unpaid, after the exhaustion of the personal assets, and the court will then order a sale of the land.

But there is no pretence that any such proceeding was had in the present case. The assignment, or order for the warrant, was made by the executor, as in the ordinary performance of his duties.

It is in proof that the consideration received was a pair of boots and forty dollars. The inadequacy of consideration is so gross as to afford strong presumption of fraud. The right was for four thousand acres of land, to be located in a rich and fertile district in Ohio, and this known to both the parties; and yet this valuable estate was sold to Ladd, by the executor, for some forty-four or five dollars.

The circumstances of this transfer, independent of the want of power in the executor, as between the present complainants and Ladd, would be sufficient evidence of fraud to set aside the assignment.

But the assignment by the executor was wholly without authority; and, therefore, could convey no right to his assignee.

Is the defendant chargeable with notice of this want of power in the executor? We think he is a purchaser, with notice.

The assignment, by the executor, appears upon the face of the warrant, which was transferred to the defendant and copied into the patent.

This was clearly notice to the defendant that the assignment was made by the executor; and it was the duty of the defendant to examine the will for the power to make it. Ordinarily an executor does not possess this power; and the defendant was bound to look into his authority. The defendant is as much chargeable with notice as if the assignment had been made by an attorney, and no inquiry had been made into the power under which he acted. The executor was, in fact, a mere agent, and could only act within the limit of his authority. Any assignment beyond this could transfer no right. 4 Ohio Rep., 446.

Is this defect of authority in the executor cured by the lapse of time?

The right of the complainants is not barred by the statute of limitations, as they are residents of Virginia, and do not appear to have ever been in this State. The statute, therefore, does not run against them. But they were minors, and on this ground, if they were residents of Ohio, the statute would not be a bar.

It is admitted that lapse of time may operate, in cases where the

statute does not bar; but the circumstances which would prevent the effect of the statute, if the complainants were residents, are conclusive against the lapse of time.

This principle is applied by a court of chancery under its own rules, where a party has slept upon his rights. But what negligence has there been in this case? Lapse of time can no more operate against minors than the statute of limitations; and the complainants are proved to have been minors until within a few years past. They are citizens of another State, and they came very lately to a knowledge of their rights. Under such circumstances, there can be no negligence attached to them; they have not slept upon their rights.

On the contrary, so soon as they obtained a knowledge of the mode by which a very valuable property, which had descended to them, had been disposed of by the executor, they sought legal redress.

They have proved their heirship and their minority; and this proof, under the circumstances of the case, is a full and satisfactory answer to the argument drawn from the lapse of time.

The defendant must be considered as holding the lands in trust for the complainants. That Ladd was guilty of fraud in procuring the warrant in his own name as assignee, and in obtaining the assignment from the executor, there is little doubt; and it is very clear that the executor had no authority to make the transfer. But the defendant seems to have acted fairly, and in good faith, in procuring his right to the warrant and entry, although he was negligent in not investigating the assignment to Ladd.

By the location of the warrant, the survey of the land, its improvements, and the payment of the taxes, the complainants have been greatly benefitted; and as this has been through the instrumentality of the defendant, or of those under whom he claims, it is equitable that some compensation should be made to him. And as the master has reported that it was customary to give the locator one-third, and sometimes one-fifth of the land for locating, and that in this case, under the usage, the defendant is entitled to one-fourth of the land located, the court adopt the report.

This is in conformity to usage, and seems to be an equitable mode of compensating locators; and the circumstances of this case render this mode peculiarly appropriate and just.

This usage may not be so general and so well established, as to give the locator a lien on the land entered, for any portion of it in the hands of a purchaser. But where the locator enters into the possession of the land, and uses it in every respect as his own, making valuable and lasting improvements on it, and his title is found defective, as in this case, it is most equitable that he retain such a portion of the land as is usually given to the locator.

This interest, though not specifically assigned, may be held to have passed with a general assignment of all right in the warrant and entry to the defendant; or if he made the location, he may claim this compensation for services rendered, and not by virtue of an assignment.